CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1934

No. 465

ALASKA PACKERS ASSOCIATION, APPELLANT,

vs.

THE INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA AND JUAN PALMA

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA

FILED OCTOBER 13, 1934

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 465

ALASKA PACKERS ASSOCIATION, APPELLANT,

vs.

THE INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA AND JUAN PALMA

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA

INDEX

	Original	Print
Proceedings in Supreme Court of California	1	1
Petition for writ of review	1	1
Exhibit "A"—Contract of hire (omitted in printing)	10	
Exhibit "B"—Application for adjustment of claim (omitted in printing)	11	
Exhibit "C"—Amended answer (omitted in printing)	13	
Exhibit "D"—Certificate of clerk of District Court (omitted in printing)	18	
Exhibit "E"—Certificate of United States Commissioner (omitted in printing)	19	
Exhibit "F"—Medical officer's first hosital report (omitted in printing)	20	
Exhibit "G"—Medical officer's second hospital report (omitted in printing)	22	
Exhibit "H"—Report of Dr. Soderstrom (omitted in printing)	24	
Exhibit "I"—Report of Dr. Quinn (omitted in printing)	27	
Exhibit "J"—Findings and award (omitted in printing)	30	
Answer to petition for writ of review	33	7
Reply to answer for writ of review	51	17

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 6, 1934.

—5713-C

	Original	Print
Order denying petition for writ of review	65	24
Petition for rehearing after denial of petition for writ of review (omitted in printing)	68	
Order granting petition for rehearing	85	36
Writ of review (omitted in printing)	86	
Return to writ of review	88	36
Proceedings before Industrial Accident Commission of California	89	36
Certificate of secretary	89	36
Application for adjustment of claim	92	37
Answer	93	39
Report of hearing of September 16, 1932	96	40
Testimony of Juan Palma	100	43
Applicant's Exhibit No. 1—Excerpt from employee's book	114	49
Defendants' Exhibit No. 1—Agreement of May 13, 1932	115	51
Report of Hearing of October 7, 1932	117	55
Testimony of C. A. Iversen (omitted in printing)	124	
Testimony of Alfonso Alcalde (omitted in printing)	138	
Testimony of Juan Palma (omitted in printing)	141	
Testimony of Alfonso Alcalde (recalled) (omitted in printing)	143	
Testimony of Juan Palma (recalled) (omitted in printing)	143	
Amended answer	146	58
Certificate of U. S. Commissioner	151	62
Certificate of Clerk of District Court	152	63
Findings and award	153	64
Order denying rehearing (omitted in printing)	155	
Order vacating submission (omitted in printing)	156	
Opinion, per curiam	157	66
Petition for rehearing (omitted in printing)	172	
Order denying petition for rehearing	205	97
Judgment	206	97
Petition for appeal, assignment of errors and prayer for reversal (omitted in printing)	207	
Order allowing appeal	218	98
Bond for costs on appeal (omitted in printing)	220	
Citation and service (omitted in printing)	222	
Affidavit of service of citation (omitted in printing)	224	
Præcipe for transcript of record (omitted in printing)	227	
Appellees' præcipe for transcript of record (omitted in printing)	230	
Clerk's certificate to transcript of record (omitted in printing)	232	
Statement of points to be relied upon and designation as to printing record	233	99
Appellees' designation of parts of record to be printed	237	101

[fols. a & 1]

IN SUPREME COURT OF CALIFORNIA

S. F. No. 14950

ALASKA PACKERS ASSOCIATION, Petitioner,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA and JUAN PALMA, Respondents.

PETITION FOR WRIT OF REVIEW

To the Honorable William H. Waste, Chief Justice, and to the Associate Justices of the Supreme Court of the State of California:

Your petitioner files this, its petition for writ of review, and in support thereof alleges as follows:

I

On May 15, 1932, respondent, Juan Palma, a domiciled native and citizen of Mexico, nonresident of the State of California, entered into an agreement with petitioner at San Francisco, by the terms of which the said Palma agreed to perform certain services for and on behalf of petitioner exclusively in the Territory of Alaska. A copy of said agreement is attached hereto and made a part hereof, as though set out at length, and marked Exhibit "A"; Section 11 thereof being as follows:

"Section 11. As the only labor contemplated by this contract is to be performed in the Territory of Alaska, and as the Contractor has elected to be bound by the provisions of the Alaska Workmen's Compensation Act, Chapter 25 [fol. 2] of the laws of Alaska, 1929, pages 46 to 79 and amendments thereto, the parties of the second part hereby agree, as an incident of this contract of employment, to accept and be bound by the provisions of the said Workmen's Compensation Act of Alaska for any and all injuries arising out of and in the course of their employment, and further agree to accept as their exclusive remedy for any and all industrial injuries, the provisions of the said Workmen's Compensation Act of Alaska."

Thereafter, in accordance with said agreement, petitioner transported the said Palma, on the steamer "Chirikof," to Kvichak in the Third Judicial District of the Territory of Alaska where the said Palma entered into his employment as a laborer with petitioner under the terms of said agreement.

II

Thereafter and on June 10, 1932, the said Palma reported to petitioner's hospital at Kvichak, Alaska, complaining of intermittent pains in the epigastrium about every hour; that thereafter the said Palma was kept and treated in said hospital until discharged on July 5, 1932. During said period the said Palma was operated on by petitioner's medical officer, E. M. Soderstrom, M. D., a duly qualified practitioner of medicine and surgery, for a sigmoid tumor and intestinal abscess. After the said Palma had recovered from said operation, he returned to San Francisco and on August 18, 1932, instituted the hereinafter proceedings against petitioner before respondent Industrial Accident Commission of the State of California.

III

A copy of Palma's application for adjustment of claim is made a part hereof, as though set out at length, and marked Exhibit "B." In said application Palma alleged that he had sustained injury arising out of and in the course of his employment at Kvichak, Alaska, by an empty box falling against his stomach. Thereafter, and within the time prescribed by respondent Commission, petitioner [fol. 3] filed an amended answer to said application for adjustment of claim, a copy of which is made a part hereof, as though set out at length, and marked Exhibit "C," in which petitioner set up two defenses, (1) that the disability was nonindustrial, but to the contrary was due to natural causes unconnected with the employment, and (2) that the Alaska Workmen's Compensation Act, to the application of which both the employer and employee had agreed and to which both were subject, prohibits recovery except in proceedings brought in the District Court for the judicial district within which the accident occurs.

On October 7, 1932, said application was heard before the respondent Commission, and petitioner filed, as a part of

the record in said proceeding, the certificate of Robert W. Taylor, Clerk of the District Court of the Territory of Alaska, Third Division, copy of which is made a part hereof, as though set out at length, and marked Exhibit "D," and petitioner also filed in said proceeding the certificate of W. B. Regan, United States Commissioner and Ex-official Recorder, Naknek-Kvichak Recording Precinct, Territory of Alaska, a copy of which is made a part hereof, as though set out at length, and marked Exhibit "E."

IV

In the defense of said application upon its merits, petitioner filed with respondent Commission the original of the medical officer's hospital reports of June 10, 1932, and of June 13, 1932, copies of which are made a part hereof, as though set out at length, and marked Exhibits "F" and "G" respectively. At the conclusion of said hearing on October 7, 1932, petitioner requested a further hearing to be held by said Commission at Chowchilla, California, for the purpose of taking the testimony of the said E. M. Soderstrom, M. D., who had performed the operation as a result of which respondent Palma claims a compensable disabil-[fol. 4] ity; that the respondent Commission refused petitioner an opportunity to produce the said testimony, at Chowchilla, California, but directed petitioner in lieu thereof to procure a report from said Dr. E. M. Soderstrom upon the operation performed by him and his findings thereon; to obtain from said Dr. E. M. Soderstrom an expression of his opinion as to whether or not the said Palma suffered any disability as a result of said operation, and whether or not the condition for which the operation was performed was in any way attributable to or aggravated by the fall of the box upon the said Palma as alleged in the application for adjustment of claim. In reply to said inquiry, said E. M. Soderstrom, M. D., submitted his report, dated October 10, 1932, copy of which is made a part hereof, as though set out at length, and marked Exhibit "H." Thereafter and on October 17, 1932, there was filed before respondent Commission on behalf of said Palma by his attorney, Elmer P. Delany, Esq., the report of Dr. Francis B. Quinn, of San Francisco, copy of which is made a part hereof, as though set out at length, and marked Exhibit "I." Thereafter respondent Commission, on April

17, 1933, entered its findings and award in the said proceedings, copies of which are made a part hereof as though set out at length, and marked Exhibit "J." Thereafter and on May 5, 1933, petitioner filed with respondent Commission a petition for rehearing, which petition for rehearing was on June 3, 1933, denied by said respondent.

V

At the hearing before respondent Commission on the issues joined by said application and answer said Juan Palma testified in substance as follows:

That while engaged in the course of his employment in stacking empty boxes at Kvichak, Alaska, one of the boxes fell upon his stomach; that he subsequently went to peti- [fol. 5] tioner's hospital at Kvichak, Alaska, and was there operated on by E. M. Soderstrom, M. D., petitioner's medical officer in charge of said hospital, from which operation he has not recovered.

C. A. Iversen testified, in substance, as follows:

That he is the superintendent of Alaska Packers Association's cannery at Kvichak, Alaska, where Palma worked; that Palma gave no notice that he had suffered injury by having a box fall upon him, or otherwise; that the contract of employment (Exhibit "A" herein) was made in San Francisco in order that any suits or proceedings on account of injuries arising out of and in the course of work done under said contract should be brought within the Territory of Alaska, for the reason that it is extremely difficult and often impossible for petitioner to procure witnesses outside the district wherein the accident happened, or to make an adequate defense to a proceeding brought against it elsewhere than in the judicial district where the accident is alleged to have occurred; that A. J. Dimond was at all times, pertinent to these proceedings, the duly qualified and resident agent of Alaska Packers Association, upon whom service of process might be served in the Third Judicial District in the Territory of Alaska; that Kvichak, Alaska, is located within said Third Judicial District.

Said testimony, together with the above mentioned exhibits, constitutes all the evidence received by said Commission and all the evidence upon which findings and award are based.

VI

Your petitioner had no right of appeal from the said award or from the said order of the respondent Industrial Accident Commission denying said petition for rehearing, nor has petitioner a plain, speedy or adequate remedy at law or in equity.

[fol. 6]

VII

The findings and award of April 17, 1933, of the respondent Industrial Accident Commission, deprive petitioner of its property without due process of law, and deny petitioner the equal protection of the laws and are in violation of the rights, privileges and immunities of the petitioner under the Constitution of the United States, and particularly under Article 4, Section 1, and Article 4, Section 3, thereof and the Fourteenth Amendment thereto, and under the Constitution of the State of California, and particularly under Sections 13 and 14 of Article 1 thereof.

VIII

The Workmen's Compensation, Insurance and Safety Act of the State of California, in so far as the same or any part thereof purports to authorize said award, or

1. Purports to deny the validity of or to deny full faith, credit and effect to the said contract of employment; or

2. Purports to deny the applicability of the Workmen's Compensation Act of Alaska to the alleged accident herein mentioned; or

3. Purports to authorize a finding of jurisdictional facts, and particularly of the alleged fact that the said injury arose out of and in the course of the employment of said Palma by petitioner, without substantial evidence in support thereof; or

4. Purports to authorize the Industrial Accident Commission to make findings upon the basis of the opinion of witnesses who are ignorant of the facts, or of opinions resting on assumptions contrary to fact, or

[fol. 7] 5. Purports to authorize said Commission to accept the report of the said Dr. Quinn as sufficient to constitute a conflict of evidence with the report of the said Dr. Soderstrom,

is contrary to the Constitution of the United States, and particularly contrary

1. To Article 4, Section 1, providing that full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state;

2. To Article 4, Section 3, providing that the Congress of the United States shall have power * * * to make all needful rules and regulations respecting the territory of the United States;

3. To the Fourteenth Amendment of the Constitution of the United States providing that no state shall deprive any person of property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws,

and is, to that extent, unconstitutional and void.

IX

The said Workmen's Compensation, Insurance and Safety Act of the State of California, in so far as the same or any part thereof purports to authorize said award, is, for the reasons aforesaid, contrary to the Constitution of the State of California in each of the respects in which it is herein alleged to be contrary to the Constitution of the United States.

Wherefore, your petitioner prays that a review be granted by this honorable court directed to respondent Industrial Accident Commission commanding it to certify fully to this court at a specified time and place a tran-[fol. 8] script of all records, proceedings, papers and facts in reference to the premises to the end that the same may be reviewed by this court and that the said findings and award and order of April 17, 1933, be annulled and set aside, and such other relief granted therefrom as is meet and proper in the premises.

Dated, San Francisco, July 3, 1933.

Pillsbury, Madison & Sutro, Attorneys for Petitioner. F. D. Madison, Francis Gill, of Counsel.

[fols. 9-32] *Duly sworn to by Francis Gill. Jurat omitted in printing.*

[fol. 33] IN SUPREME COURT OF CALIFORNIA

[Title omitted]

ANSWER TO PETITION FOR WRIT OF REVIEW

Petitioner applies for a Writ of Review from an award of the Commission granting compensation to one Juan Palma, an employee of the Alaska Packers Association. Palma entered into a contract of employment with Petitioner at San Francisco, California, by the terms of which he agreed to work during the salmon season of 1932 in Petitioner's cannery in Alaska. Petitioner agreed to transport Palma to Alaska and back to San Francisco.

In said contract of employment, there was contained a provision, Section 11 (see page 13 of the Petition for Writ) in which the parties agreed that in case of injury they would be bound exclusively by the compensation law of Alaska. In due course, Palma went to Alaska and was there injured while working for Petitioner. He did not commence an action in the territorial courts to recover compensation but returned to California, filing an application before the Industrial Accident Commission of Cali-
[fol. 34] fornia which awarded compensation under the California Workmen's Compensation Act.

The validity of the award, as made by the California Commission, directly involves the following sections of the California Act.

Section 27 (a) reads:

"Section 27 (a). No contract, rule or regulation shall exempt the employer from liability for the compensation fixed by this act, * * *."

and:

"Section 58. The Commission shall have jurisdiction over all controversies, arising out of injuries suffered without the territorial limits of this state in those cases where the injured employee is a resident of this state at the time of the injury *and the contract of hire was made in this state*, and any such employee or his dependents shall be entitled to the compensation or death benefits provided by this act." (Italics added.)

The Questions

The questions involved are:

1. Is petitioner, as a California employer, exempted from liability under the California Act by reason of Section 11 of the private contract between itself and Respondent Palma?

2. Is Section 58 constitutional?

3. Is the finding that the injury to Palma arose out of [fol. 35] and in the course of his employment supported by evidence of a substantial character?

We shall consider the above questions seriatim, although we have made certain references to the first question under question two.

Petitioner Cannot Exempt Itself from Liability Under Act

Section 27 (a) is set out above.

Said section has been declared constitutional by this Court in Walker D. Hines v. Ind. Acc. Com., 182 Cal. 359, as follows:

"The applicant for compensation prior to his employment was physically examined and found to have lax inguinal rings predisposing him to hernia, and thereupon was required to execute an agreement releasing his employer from all claims that might arise on account of hernia appearing while in service. During the course of his employment he sustained a left inguinal hernia and upon application for compensation the employer relied upon the release.

"The Court: We are satisfied that in view of the provisions of Section 27a of the Workmen's Compensation, Insurance and Safety Act of 1917 (Stats. 1917, p. 855), petitioner cannot avail himself of the agreement relied on. [fol. 36] "The application for a writ of review is denied."

To the same effect is Terminal Rep. v. Ind. Acc. Com., 180 Cal. 122, 127.

It is submitted Section 11 of the contract is an attempted exemption invalid under Section 27 (a).

2. Section 58 is Constitutional

In discussing this question certain salient facts must at once be emphasized.

First. Petitioner is a California employer and has secured the payment of compensation to those persons whom it employs in accordance with the laws of California by [fol. 37] qualifying as a self-insurer, under Section 29 (a) (2) of the Act. It has engaged in business in San Francisco, California, since 1893.

Second. Palma, along with a large number of laborers, was hired in San Francisco, petitioner agreeing to transport him from San Francisco to Alaska and back to San Francisco again. Period of employment covered the salmon canning season in Alaska approximately two or three months.

Third. The employee has brought his suit in the Courts of California, and not a foreign jurisdiction, there seeking to compel the foreign court to determine his rights under the laws of California.

We contend that the constitutionality of Section 58 is effectively concluded by Quong Ham Wah Company v. Ind. Acc. Com., in 255 U. S. 445, dismissing writ of error, 184 Cal. 26, 192 P. 1021.

We submit the Supreme Court of the United States has said as much in Bradford Electric Company v. Clapper, 286 U. S. 145, 156, as follows:

"But, obviously, the power of Vermont to effect legal consequences by legislation is not limited strictly to occurrences within its boundaries. *It has power through its own tribunals to grant compensation to local employees, locally employed, for injuries received outside its borders, compare Quong Ham Wah Co. v. Industrial Accident Comm.*, 255 U. S. 445, dismissing writ of error, 184 Cal. [fol. 38] 26, 192 Pac. 1021, and likewise has power to exclude from its own courts proceedings for any other form of relief for such injuries." (Italics added.)

A note on page 156 of the same opinion collects the cases which have construed workmen's compensation acts as applicable to injuries received outside the state, and up-

holding the validity of acts so construed. These decisions are so numerous that we deem reference to them is sufficient.

After citing two cases where a contrary view was reached, the note continues:

"Early decisions to like effect, in California, Illinois and Massachusetts, have been *superseded by statute.* See North Alaska Salmon Co. v. Pillsbury, 174 Cal. 1."

Section 58 was enacted subsequent to the decision of this court in North Alaska Salmon Co. v. Pillsbury, supra.

Petitioner dismisses Quong Ham Wah v. Ind. Acc. Com., supra, with the following observation:

"This court, in Quong Ham Wah Co. v. Industrial Accident Commission, supra, held merely that the authority of the Commission inured to the benefit of non-residents as well as residents of the state and the decision was wholly concerned with construing Section 58 of the California Act so as to avoid discrimination against non-residents and to avoid limiting the benefits of the section to residents in vio- [fol. 39] lation of the Federal Constitution. It is not a fact that the constitutionality of this extra-territorial authority of the California Industrial Accident Commission was upheld in Quong Ham Wah Co. v. Industrial Accident Commission, supra." (Page 85 of the Petition.)

But the Quong Ham Wah case goes much further than petitioner would have the Court believe. The Court decided first that petitioner in said case was in a position to assail the constitutionality of Section 58. The Court then found that an invalidity of discrimination did exist in the statute, but that the statute itself being valid by operation of law the privileges of Section 58 were extended to non-resident employees. That this is most plain, see the conclusion of the Court, 192 P. 1029, as follows:

"It follows that, despite the invalidity of the discrimination, the statute itself is valid, and may be made to apply uniformly to citizens of California and the citizens of the other states."

Having decided that petitioner was in a position to challenge the constitutionality of Section 58 in the Quong Ham

Wah case, and that the invalidity of discrimination operated to do nothing more than extend the privilege of the section to non-residents, the only remaining question was whether the State could enact a law giving a right of recovery under its own statutes, where injury occurred in a foreign jurisdiction.

[fol. 40] This last phase of the case is fully considered in the Quong Ham Wah case both in the main and the concurring opinions.

For example, Petitioner indulges in a dissertation predicated upon an article by Ernest Angell in 31 H. L. R. as well as North Alaska Salmon Co. v. Pillsbury, 174 Cal. 1, the purport of which is the demonstration that Section 58 of the Act is in no manner an incident of the contract of employment, the California Act being compulsory and not optional, with the result that Palma's claim, sounding in tort, redress may only be obtained in the territorial court, the place of injury.

This Court had all of these arguments in mind in Quong Ham Wah v. Ind. Acc. Com., supra. Compare the following on page 1025 of said decision:

"But the statute which is now before us assumes to extend its effect only to those cases where the contract of hire was made in this state. It is therefore not an attempt to create an obligation merely as an incident to a status, but is, in form and substance, *a genuine regulation of contracts subject to the sovereignty of the state.* The liability which it imposes is, so as to speak, in a class by itself, being neither strictly contractual nor delictual, and it may, for want of a better term, be described as quasi ex contractu. Post v. Burger, 216 N. Y. 544, 550, 111 N. E. 351, Ann. Cas. [fol. 41] 1916B, 158; Berton v. Dry Dock Co., (D. C.) 219 Fed. 763. The contract creates a relationship under the sanction of the law and the same law attaches as an incident thereto an obligation to compensate for injuries sustained abroad, amounting to a sort of compulsory insurance. The Legislature may lawfully impose that right and duty upon those operating under a contract subject to the legislative power, and no principle of law is defeated by attaching to such contracts the same duties and rights as incidents to acts abroad that are lawfully imposed as incidents to the same acts occurring within the geograph-

ical limits of the state. Angell on Recovery under Workmen's Compensation Law for Injuries Abroad, 31 Harvard Law Review, 16; Smith v. Heine Safety Boiler Co., 224 N. Y. 9, 119 N. E. 878, Ann. Cas. 1918D, 316; Jenkins v. T. Hogan & Sons, 177 App. Div. 36, 163 N. Y. Supp. 707.

"It is at once apparent that the Legislature has equal power to provide for the creation of a compulsory obligation to compensate for injury suffered elsewhere *as a regulation of contracts* subject to the sovereignty of the state whether the contracting employe be domiciled in this state or not. Story on Conflict of Laws (8th Ed.), p. 375; Western Metal Supply Co. v. Pillsbury, 172 Cal. 407, 416, 156 Pac. 491, Ann. Cas. 1917E, 390. Since, therefore, the right [fol. 42] is created only in favor of citizens of the state and domiciled aliens, there is a direct discrimination against citizens of sister states." (Italics added.)

And the same reasoning with equal force applies to Section 27 (a). The employer in hiring men in California contracts with reference to the general regulation of contracts imposed by the State in these matters. The attempted exemption by private agreement is, therefore, without effect being in derogation of the specific provision of the State law that no contract, rule or regulation shall exempt the employer from liability under the California Act.

Petitioner relies upon two cases recently decided by the United States Supreme Court.

In Bradford Electric Co. v. Clapper, 286 U. S. 145, Clapper was hired in Vermont and injured in New Hampshire. Suit was filed in New Hampshire and taken into the Federal Court on grounds of diversity of citizenship. The Court held that the rights as between the company and Clapper had to be determined according to the Vermont Act where the contract was made.

The reason for the decision was the particular wording of the Vermont Statute which read as follows:

"The Vermont Workmen's Compensation Act provides that a workman hired within the State shall be entitled to compensation even though the injury was received outside the 'State, Vermont General Laws, c. 241, s. 5770; that [fol. 43] 'employers who hire workmen within this state to work outside of the state, may agree with such workmen

that the remedies under the provisions of this chapter shall be exclusive as regards injuries received outside this state by accident arising out of and in the course of such employment, and all contracts of hiring in this state shall be presumed to include such an agreement,' 5774; that every contract of employment made within the State shall be presumed to have been made subject to its provisions, unless prior to the accident an express statement to the contrary shall have been made, in writing, by one of the parties, s. 5765; and that acceptance of the Act is a 'surrender by the parties * * * of their rights to any other method, form or amount of compensation or determination thereof,' s. 5763. Neither the Company nor Leon Clapper filed a statement declining to accept any provision of the Vermont Act.''

In State of Ohio v. Chattanooga Boiler and Tank Company, 53 Sup. Court Reporter, 663, the contract of employment was made in Tennessee, at the employer's principal place of business; the employee was killed while working in Ohio. The State of Ohio, having paid the widow under the Ohio Act, sought reimbursement from the employer and brought an action against him in Tennessee and recovered. The Supreme Court affirmed the judgment. We therefore [fol. 44] have the Supreme Court in the Bradford case saying that the rights of the parties must be determined by the Act of Vermont where the contract was made; but in State of Ohio, etc., allowing reimbursement in Tennessee where the contract was made against the Tennessee employer but according to the Ohio Act, the place of injury.

The Court however explains the apparent conflict.

''The Tennessee act is different (from the Vermont Act). It is true that it provides that, 'when an accident happens while the employee is elsewhere than in this state, which would entitle him or his dependents to compensation had it happened in this state, the employee or his dependents shall be entitled to compensation under this chapter if the contract of employment was made in this state, unless otherwise expressly provided by said contract,' Tenn. Code 1932, S. 6870; and that 'the rights and remedies herein granted to an employee subject to this chapter on account of personal injury or death by accident shall exclude all other rights and remedies of such employee, his personal

representative, dependents, or next of kin, at common law or otherwise, on account of such injury or death.' Id., S. 6859. *But, as construed and applied by the highest court of Tennessee, the statute does not preclude recovery under the law of another state.* And the full faith and credit [fol. 45] clause does not require that greater effect be given the Tennessee statute elsewhere than is given in the courts of that state. Compare Allen v. Alleghany Co., 196 U. S. 458, 25 S. Ct. 311, 49 L. Ed. 551; Robertson v. Pickrell, 109 U. S. 608, 610, 611, 3 S. Ct. 407, 27 L. Ed. 1049; Board of Public Works v. Columbia College, 17 Wall. 521, 529, 21 L. Ed. 687." (Parentheses and italics ours.)

Petitioner argues from the above cases that the Statute of Alaska precludes recovery under the law of another state.

He cites Section 22 of Chapter 98 of the Session Laws of Alaska, 1923, as follows:

"Section 22. No *action* for the recovery of compensation *hereunder* shall be brought in any court holden outside of the judicial division in which the injury occurred, out of which the right to compensation arises, except in cases where service cannot be had on the employer in the judicial division where the injury occurred. No action for the recovery of compensation hereunder shall in any case be brought in any court outside of the Territory of Alaska, except in cases where it is not possible to obtain service of summons upon the defendant in said Territory, and in all such cases the plaintiff must plead and prove his inability [fol. 46] to obtain service of summons upon the defendant within the Territory of Alaska." (Italics added.)

The effect of the underscored portions of this section is that no action based upon the territorial act shall be prosecuted outside the judicial division in which the injury occurred. But certainly there is nothing in Section 22 saying that Respondent cannot bring suit in California under the California Act on account of his injury; or preclude, as the Supreme Court says, recovery under the law of another state.

Furthermore, the contract of employment being made in California, the parties must be held, as a matter of law, to have contracted with reference to the California law,

the provisions of Section 11, of their private agreement to the contrary notwithstanding.

If the contract of employment in this case had been made and entered into in Alaska, and the injury had occurred in California, then upon the bringing of suit in California, the Alaska act would be a defense to the California action under the Bradford case, if it could be shown that the Alaska Act like the Vermont Act precluded recovery under the law of any other state; but the Alaska Act not precluding recovery under the laws of any other state, injured could bring suit in California, the place of injury under our assumption, under the California law, and if recovery be had, said California judgment would be valid, and enforceable in Alaska, under the full faith and credit provisions of the Federal Constitution, even though recovery [fol. 47] under the California Act might be greater than the territorial act, and irrespective of the fact that the contract of hire was made in Alaska. The latter situation is Ohio State v. Chattanooga, et al., supra. Of course, in the case at bar, the contract of employment being made in California and not in Alaska, we contend, for the reasons already recited (1) that the rights of the parties claiming as they do under the California act has nothing to do with the territorial act; and (2) that if by any stretch of the imagination a California Court would say that the parties, irrespective of Section 27 (a) of our Act, could by contract, duly executed in California, exempt themselves from the operation of the California law and contract solely with reference to the Alaska Act, that still, as already pointed out, there is nothing in the Alaska Act, which would preclude the parties from recovery under the act of any other state or territory. If the forum in which suit is brought gives a right of recovery under its laws for injuries sustained abroad where the contract of employment is made within its jurisdiction, certainly there is nothing in such action which is the concern of Alaska. California does this and the California law creating the right has been held constitutional by the Supreme Court of the United States.

We fail to perceive how the Bradford Electric, and Ohio State cases are of much comfort to Petitioner. They involve an interesting question on conflicts of laws in situations wholly different from the case at bar. The situation

in the Bradford case could not occur except under a very [fol. 48] particular statute. Certainly the Ohio State case is not authority for the proposition that if the widow had brought suit originally in Tennessee where the contract was made instead of Ohio, she could not have recovered under the Tennessee Act. The Tennessee statute plainly indicates that she could have recovered in Tennessee. After filing suit in Ohio, the widow did bring suit in Tennessee. This action was dismissed, but upon the grounds that the widow having brought suit in Ohio had *renunciated her right of recovery under the Tennessee Act.*

It is submitted Respondent Palma's contract of employment having been made in California, he is entitled to recovery under the California Compensation Act for his injuries in Alaska. The matter is concluded by Quong Ham Wah v. Ind. Acc. Com., supra.

.3. Injury Arose out of and in the Course of Employment

Petitioner's sole attack upon the question of the proximate cause of the injury is directed to the insufficiency of Dr. Quinn's report within the rule of Winthrop v. Ind. Acc. Com., 213 Cal. 351. We submit, however, that a review of Dr. Quinn's report as contained in the Petition for the Writ at page 34, contains a full and complete statement of the facts of the case, both with respect to lay and medical evidence.

Such being the case, we submit that Dr. Quinn's opinion based upon the same facts and circumstances as is Dr. Soderstrom's opinion, is competent evidence and substantially supports the finding as made. The First District Court of Appeal had discussed the same contention as is now [fol. 49] made by Petitioner in McNamara v. Ind. Acc. Com., 72 C. A. D. 1095, 1098, as follows:

"Making a different attack, the petitioner asserts that Dr. Tiffany performed the autopsy and that Dr. Read was not present and never saw the heart of the decedent and therefore there is no conflict in the evidence. (Winthrop v. Industrial Acc. Com., 213 Cal. 351.) With this assertion we do not agree. When petitioner's application was submitted to the defendant Commission there were two distinct theories presented. It was her contention, as shown by her expert, Dr. Tiffany, that the decedent's death was

caused by hypertrophy of the heart and valvular lesion. That expert testified to all that he saw when he performed the operation; and he also testified to his conclusions based on the knowledge so acquired and the history of the case. On the other hand, it was the contention of the insurance carrier, as shown by its expert Dr. Read, that Dr. Tiffany was mistaken in his theory as shown above, and that death was caused by coronary thrombosis which was not referable to the employment of the decedent, but was a natural cause. The conclusions of the latter witness were based on the facts testified to by Dr. Tiffany and on an extended history of the case. It thus appears that the two experts took [fol. 50] into consideration the same facts, but reached different conclusions."

It is submitted that Petition for Writ of Review should be denied.

Arthur I. Townsend, Attorney for Respondent, Industrial Accident Commission.

[fol. 51] [File endorsement omitted]

[fol. 52] IN SUPREME COURT OF CALIFORNIA

[Title omitted]

REPLY TO RESPONDENT'S ANSWER TO PETITION FOR WRIT OF REVIEW—Filed Aug. 19, 1933

I

The primary issue presented to this court is whether the Alaska Workmen's Compensation Act, sections 1 and 10 thereof, is denied full faith and credit by the California Industrial Accident Commission's assumption of jurisdiction over the alleged injury admittedly arising out of and in the course of an Alaskan employment. The issue is not as stated by respondent (p. 2):

[fol. 53] "1. Is petitioner, as a California employer, exempted from liability under the California Act by reason of Section 11 of the private contract between itself and respondent Palma?"

Section 1 of Chapter 25, Laws of Alaska 1929, page 46, provides that Alaska Packers Association:

"shall be liable to pay compensation * * * to each of * * * its employees who receives a personal injury by accident arising out of and in the course of his * * * employment * * * in all cases where the employee * * * so injured had not, prior to the time of being so injured, given notice of his * * * election to reject the provisions of this Act in the manner * * * provided."

Section 10 provides:

"*The right to compensation for an injury and the remedy therefor granted by this Act shall be in lieu of all rights and remedies as to such injury now existing either at common law or otherwise, and no rights or remedies,* except those provided for by this Act, *shall accrue to employees entitled to compensation under this Act while it is in effect;* nor shall any right or remedy, except those provided for by this Act accrue to the personal or legal representative, dependents, beneficiaries under this Act, or next of kin of such employee." (Italics ours.)

[fol. 54] Section 10, Chapter 25, Laws of Alaska 1929, page 46, brings the case at bar flatly within the rule announced in State of Ohio v. Chattanooga Boiler and Tank Company, May 23, 1933, 53 Supreme Court Reporter 663, which was an original proceeding in the Supreme Court and was not an appeal as stated by respondent from an action brought by the State of Ohio in Tennessee. The provision of section 10 above referred to also falls within the rule announced in Bradford Electric Co. v. Clapper, 286 U. S. 145, where the reasons of the decision, as explained in State of Ohio v. Chattanooga Boiler and Tank Company, supra, rested upon the peculiar and exclusive provision of the Vermont Act, not as asserted by respondent because the contract was made in Vermont, but because Clapper's employment with the Bradford Electric Light Co. was a Vermont employment. Likewise in State of Ohio v. Chattanooga Boiler and Tank Company, supra, the employer and employee relationship had its status and existence only in the State of Ohio. Both the Vermont Act and the Ohio Act being in force at the place of employment gave the employee his exclusive remedy for injuries arising out of

and in the course of his employment and precluded recovery under the law of another state. Respondent's assertion on page 13 of the answer that Palma was not, in the [fol. 55] case at bar, precluded, as the Supreme Court says, from recovery under the law of another state, omits entirely the effect of section 10 of the Alaska Workmen's Compensation Act. Respondent's first contention resolves itself into the assertion, page 13, lines 21-22 of the answer:

"but the Alaska Act not precluding recovery under the laws of any other state injured could bring suit in California."

The facts are not disputed. Palma was awarded compensation for injuries sustained in the course of an Alaskan employment with which California has or had no social, political or economic interest—no labor whatever was intended or was performed in the State of California. True, the contract of employment was made in California, a purely fortuitous circumstance. Respondent seizes upon this fortuitous circumstance and contends (p. 13):

"Furthermore, the contract of employment being made in California, the parties must be held, as a matter of law, to have contracted with reference to the California law, the provisions of Section 11, of their private agreement to the contrary notwithstanding."

Petitioner's contention, simply stated, is:

California may compel acceptance of its act whenever this State has a political, social or economic interest in the [fol. 56] employer-employee relationship. California may go further and impose its provisions for injuries outside its borders whenever the parties agree to be bound by the California Act, regardless of place of employment. This second premise is the basis of the decision in Bradford Electric Co. v. Clapper, 286 U. S. 145, wherein both employer and employee had expressly agreed that acceptance of the Vermont Act was and constituted "a surrender by the parties * * * of their rights to any other method, form or amount of compensation or determination thereof."

In the case at bar, however, acceptance of the California Act cannot be presumed or read into the contract of employment, the California Act, in so far as it relates to

foreign employments, being purely optional or elective. Section 11 of the contract of employment definitely disposes of respondent's contention that the contract of employment embraced, as a matter of contract, the provisions of the California Workmen's Compensation, Insurance and Safety Act.

As it is respondent's contention that the contract of employment, Exhibit "A" of the petition for writ of review, embraced as a matter of law the provisions of the California Workmen's Compensation, Insurance and Safety Act, petitioner contends that any attempt on the part of the State to read into this contract of employment, con-
[fol. 57] trary to the express provisions of the contract itself, the provisions of the California Act is violative of the federal constitution in three different respects. It denies full faith and credit to the public Acts of the Territory of Alaska. It is in contravention of the power of the United States Congress to make all needful rules and regulations of the Territory of Alaska. It deprives petitioner of its property without due process of law and denies petitioner the equal protection of the law by an arbitrary and unreasonable abridgment of the freedom of contract. (Memorandum of Points and Authorities in Support of Petition for Writ of Review, pp. 65-79.)

In other words, California may not compel acceptance of its Act for injuries occurring in the course of and arising out of an Alaska employment. The extent of California's jurisdiction is to hold the parties to an election to be bound by the California Act by contracting in California under circumstances requiring or permitting the presumption that the employer and employee elected to be bound by the provisions of the California Act. The California Act, though compulsory with regard to California employments, is, however, with regard to foreign employers merely elect-
[fol. 58] ive and cannot be made compulsory. The parties to the contract of employment in this case cannot be held to the provisions of the California Act because it appears that they have by contract and by mutual election accepted as their exclusive remedy the Act in force where the employment took place.

As stated in the Memorandum of Points and Authorities in Support of the Petition for Writ of Review at page 57, it is clear that the contract of employment in this case cannot be considered as having been entered into with refer-

ence to the California statute any more than a maritime contract of employment entered into in this State may be considered as having been entered into with reference to the California statute. Los Angeles Shipbuilding and Dry-Dock Company v. The Industrial Accident Commission, 57 Cal. App. 352, 207 Pac. 416.

Globe Cotton Mills v. Industrial Accident Commission, 64 Cal. App. 307 (Memorandum of Points and Authorities, p. 59) indicates that the California Workmen's Compensation, Insurance and Safety Act is a part of the contract whenever it appears that it was the intention of both parties to the agreement to make it so. The award in Globe Cotton Mills v. Industrial Accident Commission, supra, was not sustained upon the premise that the California Act [fol. 59] had compulsory application over injuries arising out of Mexican employment, but to the contrary upon the intention of the parties to the contract of employment to make it applicable.

II

The second issue mentioned by respondent (p. 2) of the answer:

"2. Is Section 58 constitutional?"

is answered above by petitioner's contention (para. 1).

As indicated above, petitioner contends that section 58 is constitutional in so far as it allows but does not compel the California Commission to assume jurisdiction over injuries suffered without the territorial limits of this State whenever it appears from the contract of employment that the parties thereto elected to accept the provisions of the California Act for injuries arising out of and in the course of a foreign employment. Any attempt by California to compel acceptance of its Act as in the case at bar renders section 58 objectionable on three constitutional grounds:

(a) It fails to give full faith and credit to the public acts of the Territory of Alaska;

(b) It is in contravention of the power of the United States Congress in which is vested the exclusive power to [fol. 60] make all needful rules and regulations of the Territory of the United States, of which Alaska is a part;

(c) It deprives petitioner of its property without due process of law and denies petitioner the equal protection of the law.

III

The third issue presented by the answer (p. 2):

"3. Is the finding that the injury to Palma arose out of and in the course of his employment supported by evidence of a substantial character?"

is sustained by the declaration (p. 15):

"* * * that a review of Dr. Quinn's report * * * contains a full and complete statement of the facts of the case, both with respect to lay and medical evidence."

and as such is sufficient to constitute an attack upon the question of the proximate cause of the injury. Respondent supports this conclusion with the assertion:

"* * * we submit that Dr. Quinn's opinion based upon the same facts and circumstances as is Dr. Soderstrom's opinion, is competent evidence and substantially supports the finding as made."

Exhibit "F," Medical Officer's First Hospital Report, [fol. 61] Exhibit "G," Medical Officer's Second Hospital Report, Exhibit "H," Medical Officer's Final Report and Exhibit "I," Report of Dr. Quinn, constitute all the evidence on the question of proximate cause of the injury.

It is clear from the face of Dr. Quinn's report, Exhibit "I," that Dr. Quinn had no basis whatever for the report rendered by him. He did not witness the operation; he did not have any specimens of the tissue removed; he did not see the type or condition of the ulcers or the damage done by the same to the walls of the sigmoid colon.

At the time of Dr. Quinn's examination, as the report itself indicates, there was nothing but the operative scar, and it is from this observation alone that Dr. Quinn made his report, as Dr. Soderstrom's report, Exhibit "H," utterly fails to give any clue to the condition discovered upon operation.

There are not, as submitted by the Commission in its citation of McNamara v. Industrial Accident Commission, 72 C. A. D. 1095, 1098, two distinct theories presented with

regard to the proximate cause of the alleged injuries to Palma. There is but one theory: that contained in the report of Dr. Soderstrom, Exhibit "H," (p. 33) of petition:

"* * * that even if the box did fall upon the man, as he [fol. 62] claims, that he was not in any manner injured thereby, either internally or externally,"

and any attempt on the part of Dr. Quinn to take issue with this theory is, as disclosed by the face of Dr. Quinn's report, utterly without foundation in evidence. There was not in the case at bar, as there was in the McNamara case, an "extended history of the case." There was not in the case at bar as there was in the opinion of the McNamara case, any evidenc ewhatever that the "two experts took into consideration the same facts but reached different conclusions."

Conclusion

In conclusion, we wish to point out that the refusal of the Industrial Accident Commission to recognize the effectiveness of section 11 of the contract of employment between petitioner and respondent Palma is an unwarrated and unauthorized deprivation of the freedom of contract, the California Act being elective in so far as it relates to foreign employers. The so-called "attempted exemption" by private agreement is effective in every sense of the word and is not "in derogation of the specific provision of the state law that no contract, rule or regulation shall exempt the employer from liability under the California Act" (Res. Ans. p. 9).

[fol. 63] The quoted portion from Quong Ham Wah v. Industrial Accident Commission, 255 U. S. 445 (Res. Ans. p. 7), has no application to the case at bar because no employment having taken place within the State of California and no labor being performed within the State, and the State having no possible interest, either social, economic or political, in the employee-employer relationship, the State was without power to impose its "genuine regulation of contracts subject to the sovereignty of the state." California could not, assuming the contract was specifically enforcible, by any legal procedure, enforce the contract entered into in this case. The contract, therefore, did not

"create a relationship under the sanction of the law of the State of California to which the same law attaches as an incident and obligation to compensate for injuries sustained abroad, amounting to a sort of compulsion insurance." If this court should hold that the "California legislature may lawfully impose that right and duty upon those operating under a contract subject to the legislative power, and (that) no principle of law is defeated by the attaching to such contracts the same duties and rights as incidents to acts abroad that are lawfully imposed as incidents to the same acts occurring within the geographical limits of the state," then the legislature has by a public act of the State of California denied full faith and

[fol. 64] credit to the public acts of the Territory of Alaska and the Act is on that account unconstitutional and void.

We, therefore, submit that the petition for writ of review should be granted.

Dated, San Francisco, August 18, 1933.

Respectfully submitted, Pillsbury, Madison & Sutro, Attorneys for Petitioner. F. D. Madison, Francis Gill, of Counsel.

[fol. 65] IN SUPREME COURT OF CALIFORNIA

In Bank

[Title omitted]

ORDER DENYING PETITION FOR WRIT OF REVIEW—Filed Aug. 28, 1933

By the Court:

The petition for a writ of review herein is denied.

Dated August 28, 1933.

(Signed) Waste, Chief Justice.

[File endorsement omitted.]

[fol. 66] [File endorsement omitted.]

[fol. 67] Subject Index

Page

I. Alaska Workmen's Compensation alone is applicable 2
II. California may not arbitrarily limit petitioner's freedom to contract 11
III. Whether congress has power to prohibit California from asserting jurisdiction over Alaskan employments 13

Table of Authorities Cited

Pages

Adams v. Tanner, 244 U. S. 590 11
Allgeyer v. Louisiana, 165 U. S. 578, 589 11
American Banana Co. v. United Fruit Co., 213 U. S. 347, 356 10
Baum v. New York Air Terminals, 245 N. Y. S. 357 5
Bean v. Morris, 221 U. S. 485, 486, 487 10
Bradford Electric Light Co. v. Clapper, 286 U. S. 145, 52 Sup. Ct. Rep. 571 ..... 7, 8
Cameron v. Ellis Construction Co., 169 N. E. 622 5
Copeland v. The Foundation Company, 256 N. Y. 568, 177 N. E. 143 (April, 1931) 5
Cuba Railroad Company v. Crosby, 222 U. S. 473 10
Donohue v. H. H. Robertson Co., 199 N. Y. S. 470 (1932) 5
Hawkins v. Bleakly, 243 U. S. 210 8
Johnson v. Kennecott Copper Corporation, 248 Fed. 407 9
Kalfatis v. Commercial Painting Co., 254 N. Y. S. 519, 520 6
Madera Sugar Pine Company v. Ind. Acc. Comm., 262 U. S. 499 8
[fol. 68] Matter of Amaxis v. Vassilaros, 258 N. Y. 544, 180 N. E. 325 (1931) 5
Mountain Timber Company v. Washington, 243 U. S. 219 8
McLean v. Arkansas, 211 U. S. 539, 547, 548 12
New York Central Railroad v. White, 243 U. S. 188 8
New York Life Insurance v. Dodge, 246 U. S. 357, 373 12
Platt v. Reynolds, 282 Pac. 264 15
Post v. Burger & Gohlke, 216 N. Y. 544, 111 N. E. 351 5
Slater v. Mexican National R. R. Co., 194 U. S. 120, 126 10
Smith v. Heine S. B. Co., 119 N. E. 878, 224 N. Y. 9 ... 4, 5

Pages

Spencer Kellogg & Sons, Inc., In re, 52 F. (2d) 129 . . . 7
State of Ohio v. Chattanooga Boiler and Tank Company, 53 Sup. Ct. Rep. 663 . . . 7
Western Union Telegraph Company v. Brown, 234 U. S. 542, 547 . . . 13
Western Union Telegraph Company v. Chiles, 214 U. S. 274 . . . 13
Western Union Telegraph Company v. Commercial Milling Co., 218 U. S. 406, 416 . . . 13

American Law Institute's Restatement of the Law of Conflict of Laws, Proposed Final Draft No. 3, March 10, 1932, Topic IV . . . 2
Commentaries on the Conflict of Law, Restatement No. 4, February 1, 1928 . . . 2
California Workmen's Compensation Act, section 58 . . . 9
48 U. S. C. A., section 91, p. 35 . . . 14
48 U. S. C. A., section 21, p. 10 . . . 14

[fol. 69] IN SUPREME COURT OF CALIFORNIA

[Title omitted]

PETITION FOR REHEARING AFTER DENIAL OF PETITION FOR WRIT OF REVIEW—Filed Sept. 15, 1933

To the Honorable William H. Waste, Chief Justice, and to the Associate Justices of the Supreme Court of the State of California:

Petitioner confines this, its petition for rehearing, to the single issue as to what law is applicable to the injury suffered by Palma while in the course of his employment in Alaska. Both the California Act and the Alaska Act provide in practically identical terms that the liability for compensation provided by each act respectively is in lieu of any other liability whatsoever.

[fol. 70] 2

I

Alaska Workmen's Compensation Alone is Applicable

Of peculiar importance upon this issue is the latest Restatement of the American Law Institute dealing with the

Law of Conflict of Laws, Proposed Final Draft No. 3, March 10, 1932. The Proposed Final Draft No. 3 is the latest and most authoritative statement of the existing law, and it is contrary to the holding of this honorable court in denying the petition for writ of review. The fundamental principle upon which the Restatement proceeds is that the place of injury determines the conditions of liability. The Proposed Final Draft No. 3 deals exclusively with wrongs. The first section under Topic I includes "Claims under workmen's compensation laws . . . though not strictly wrongs," and states further in section 420 that unless a cause of action is created in the place of the wrong, no recovery may be had in any other state, although in the state where the action is brought a cause of action would have been created under the same circumstances by statute.

Topic IV of the Proposed Final Draft No. 3 deals exclusively with workmen's compensation legislation, to which the following comment is made to the first section thereunder:

[fol. 71] 3

"Comment:

a. The case of employment through an employment agency in one state, where the entire business is carried on in another state, and the applicant is merely sent to the principal office to report, is specially treated. In such a case the relation is regarded as established not by the action of the agency, but by the workman reporting for work at the principal office of the business, the transaction at the employment office not being regarded as definitive hiring. In that case, the compensation act of the state where the workman reported for duty governs liability for injuries."

The uncontradicted evidence is that Palma went aboard the S. S. "Chirikof," lying in the navigable waters of the United States at San Francisco, and on board the vessel signed the contract of employment (Exhibit "A," opposite page 12 of the petition); that the contract of employment was made with Quong Ham Wah & Co., whose function as the employment agency was to assemble aboard the vessel Mexican, Chinese and West Indian laborers for

service at petitioner's canneries in Alaska. The Spanish speaking men were assembled on deck and an interpreter of the University of Salamanca read aloud the provisions of the contract of hire in Spanish. Thereupon each man signed the contract of hire in the place provided and re-

[fol. 72] 4

ceived a book entitling him to admission into the Territory of Alaska, under the immigration laws, and to a bunk in petitioner's bunk house at Kvichak, Alaska, to meals served at petitioner's mess hall at Kvichak, Alaska, and to credit at petitioner's general store at Kvichak, Alaska. These men performed no service whatever in San Francisco or aboard ship, or in fact until they had reported on petitioner's premises at Kvichak, Alaska.

Under these circumstances, the interest of the State of California in the contract of hire was, as has been repeatedly held, purely casual. Smith v. Heine, S. B. Co., 224 N. Y. 9, 119 N. E. 878, Ann. Cas. 1918D, 316, wherein it was held that the New York Workmen's Compensation Law, like California's Compensatory Act, involves an exercise of the police power of the state and

"'does not attempt to regulate the duty of foreign employers in the conduct of their business within foreign jurisdictions, * * * A duty is imposed by law on employers conducting a hazardous employment in New York to insure their workmen against injury, and the insurance covers injuries incidental to that employment though suffered in another state. * * * The duty to insure does not outlast the existence within our borders of the business or relation which calls it into life.'"

[fol. 73] 5

New York has definitely receded from the position taken in Post v. Burger & Gohlke, 216 N. Y. 544, 111 N. E. 351, Ann. Cas. 1916B, 158. Smith v. Heine S. B. Co., supra; Cameron v. Ellis Construction Co., 169 N. E. 622, in which, at page 623, it is said:

"The test in all cases is the place where the employment is located."

This last decision by Leyman, J., was concurred in by Cardozo, C. J., who also concurred in two per curiam

opinions subsequently affirming the holding in Comeron v. Ellis Construction Co., supra; Copeland v. Foundation Company, 256 N. Y. 568, 177 N. E. 143 (April, 1931); Matter of Amaxis v. Vassilaros, 258 N. Y. 544, 180 N. E. 325 (December, 1931).

See, also: Donohue v. H. H. Robertson Co., 199 N. Y. S. 470; Baum v. New York Air Terminals, 245 N. Y. S. 357, where the same rule was applied upon the following facts as stated by the court (p. 358):

"The point in controversy is whether the claimants are entitled to compensation under the Workmen's Compensation Law of this state or must apply in New Jersey under the laws of that state. It is undisputed that the deceased

[fol. 74] 6

workman had not previously worked for this employer and never did any work for this employer within the state of New York, but that, from the date of his hiring in March until his death by drowning in New Jersey during the course of his employment in April, he had worked exclusively in the latter state on a single undertaking of his employer, the construction of a flying field costing about $2,000,000 and taking about two years to complete. At the time of the accident, the business of the employer was the construction of airports in the vicinity of New York City, and it was constructing two flying fields, one in New York state and the other in New Jersey, where the deceased had been working exclusively."

Kalfatis v. Commercial Painting Co., 254 N. Y. S. 519, at p. 520:

"He was injured in Pennsylvania and at no time did he work for his employer in New York. Thus, it does not appear that his work in Pennsylvania was incidental to general employment in New York."

In every state having a compulsory Workmen's Compensation Act, the rules as stated in the Restatement of the American Law Institute have been accepted by the respective courts and the Supreme Court of the United States, in so far as it has ruled on the subject, has tended

[fol. 75] 7

to follow the same rules. If the decision of this court denying the petition for writ of review stands, California alone, of all the states having compulsory Workmen's Compensation Acts, will be in the position of asserting a compulsory act over injuries occurring in an exclusively foreign employment. Such a holding is in conflict with the latest expressions of the United States Supreme Court.

In Bradford Electric Light Co. v. Clapper, 286 U. S. 145, 52 Sup. Ct. Rep. 571, at p. 576, note 7, the court treats of statutes undertaking to prohibit acts beyond the borders of a state; of statutes which attempt to forbid or regulate subsequent modification of contracts by the parties in other states; of statutes purporting to create a liabiliy for acts without the state.

Note 8 on the same page cites with approval In Re Spencer Kellogg & Sons, Inc., 52 F. (2d) 129, where at page 134 it was held:

"(12) Had the statute affected to substitute compensation for liabilities arising under New York law, *regardless of the parties' will, we might indeed be obliged to deny it any extraterritorial effect; the power of a state is ordinarily limited by its borders.*" (Italics ours.) State of Ohio v. Chattanooga Boiler and Tank Company, 53 Sup. Ct. Rep. 663.

[fol. 76] 8

Finally, may we point out that the constitutionality of Workmen's Compensation Acts has been consistently upheld by the Supreme Court of the United States on the ground that they constitute a reasonable exercise of the police power of the state.

Bradford Electric Light Co. v. Clapper, supra, at p. 576:

"But to refuse to give effect to a substantive defense under the applicable law of another state, as under the circumstances here presented, subjects the defendant to irremedial liability. This may not be done." (Citing cases cited in the memorandum of points and authorities at p. 77.) New York Central Railroad v. White, 243 U. S. 188; Hawkins v. Bleakly, 243 U. S. 210; Mountain Timber Com-

pany v. Washington, 243 U. S. 219; Madera Sugar Pine Company v. Industrial Accident Commission, 262 U. S. 499.

As illustrated above, we submit there is no possible basis for the exercise of the police power of this state over injuries occurring in the course of an exclusively Alaskan employment

Alaska has undoubted jurisdiction to impose penalties

[fol. 77] 9

upon petitioner for failure to comply with the provisions of its Workmen's Compensation Act, such, for example, as depriving petitioner of all defenses and inhibiting either the employer or employee from waiving by agreement any rights to compensation under the act. Johnson v. Kennecott Copper Corporation, 248 Fed. 407.

If California is to stretch its jurisdiction to penalize petitioner for doing what Alaska requires petitioner to do, then an unjust situation is obviously created, which California law should be construed to modify, not to justify. Clearly, this modification is accomplished by holding section 58 of the California Workmen's Compensation Act elective in so far as it appertains to purely foreign employments, by holding that while California may compel acceptance of its act whenever California has a political, social or economic interest in the employee-employer relationship, it may not go further and, regardless of the will of the parties, impose its provisions for injuries outside its borders whenever the parties have specifically agreed to be bound by the act in force at the place of employment. The rule contended for is in consonance with the rule of construction adopted by all state courts dealing with compulsory Workmen's Compensation Acts, and with all of the decision dealing with elective compensation acts under which it is regularly held

[fol. 78] 10

that the provisions of an elective act become a part of the contract of employment.

In Cuba Railroad Company v. Crosby, 222 U. S. 473, Mr. Justice Holmes, in delivering the opinion of the court, says (pp. 478, 479):

"But when an action is brought upon a cause arising outside of the jurisdiction it always should be borne in

mind that the duty of the court is not to administer its notion of justice but to enforce an obligation that has been created by a different law. Slater v. Mexican National R. R. Co., 194 U. S. 120, 126. The law of the forum is material only as setting a limit of policy beyond which such obligations will not be enforced there. With very rare exceptions the liabilities of parties to each other are fixed by the law of the territorial jurisdiction within which the wrong is done and the parties are at the time of doing it. American Banana Co. v. United Fruit Co., 213 U. S. 347, 356. See *Bean v. Morris,* 221 U. S. 485, 486, 487. *That and that alone is the foundation of their rights.*

• • • • • • •

We repeat that the only justification for allowing a party to recover when the cause of action arose in another civilized jurisdiction is a well founded belief that it was a cause of action in that place. The right to recover stands upon that as its necessary foundation. It is part of the plaintiff's case, and if there is reason for doubt he must allege

[fol. 79] 11

and prove it. The extension of the hospitality of our courts to foreign suitors must not be made a cover for injustice to the defendants of whom they happen to be able to lay hold." (Italics ours.)

II

California May Not Arbitrarily Limit Petitioner's Freedom to Contract

With regard to the power of the State of California to prohibit the contract of employment herein involved (Point (c) (1)) of the petition for writ of review, petitioner cites Adams v. Tanner, 244 U. S. 590, where at pages 595-6, Mr. Justice McReynolds, in delivering the opinion of the court, says:

"The general principles by which the validity of the challenged measure must be determined have been expressed many times in our former opinions. It will suffice to quote from a few.

"In Allgeyer v. Louisiana, 165 U. S. 578, 589, we held

invalid a statute of Louisiana which undertook to prohibit a citizen from contracting outside the state for insurance on his property lying therein because it violated the liberty guaranteed to him by the Fourteenth Amendment.

* * * * * * *

[fol. 80] 12

" 'It is also true that the police power of the state is not unlimited, and is subject to judicial review, and when exerted in an arbitrary or oppressive manner such laws may be annulled as violative of rights protected by the Constitution. While the courts can set aside legislative enactments upon this ground, the principles upon which such interference is warranted are as well settled as is the right of judicial interference itself. * * * If there existed a condition of affairs concerning which the legislature of the state, exercising its conceded right to enact laws for the protection of the health, safety or welfare of the people, might pass the law, it must be sustained; if such action was arbitrary interference with the right to contract or carry on business, and having no just relation to the protection of the public within the scope of legislative power, the act must fail.' McLean v. Arkansas, 211 U. S. 539, 547, 548." See also: New York Life Insurance v. Dodge, 246 U. S. 357, at 373, et seq.

[fol. 81] 13

III

Whether Congress Has Power to Prohibit California from Asserting Jurisdiction Over Alaskan Employments

Mr. Justice Holmes, in Western Union Telegraph Company v. Brown, 234 U. S. 542, in delivering the opinion of the court in holding unconstitutional a South Carolina statute purporting to give a right of action for negligent non-delivery of messages beyond the territorial limits of the state, says at p. 547:

"The injustice of imposing a greater liability than that created by the law governing the conduct of the parties at

the time of the act or omission complained of is obvious; and when a State attempts in this manner to affect conduct outside its jurisdiction or the consequences of such conduct, and to infringe upon the power of the United States, it must fail. The principle would be illustrated by supposing a direct clash between the state and Federal statutes, but it is the same whenever the State undertakes to go beyond its jurisdiction into territory where the United States has exclusive control. Western Union Telegraph Co. v. Chiles, 214 U. S. 274; see also Western Union Telegraph Co. v. Commercial Milling Co., 218 U. S. 406, 416."

With regard to the power of California to extend its legislation to incidents occurring beyond its territory, we wish to point out under section Point (2) (b) of the

[fol. 82] 14

petition for writ of review that chapter 292, 28 Stat. 710, specifically requires the courts to enforce in their respective jurisdictions all laws passed by the legislature of the Territory of Alaska the same as if such laws were passed by Congress. 48 U. S. C. A., section 97, p. 35.

See, also, an act entitled "An Act to Create a Legislative Assembly in the Territory of Alaska, to Confer Legislative Power Thereon and for Other Purposes," August 24, 1912, chapter 387, 37 Stat. 512. 48 U. S. C. A., section 21, p. 10.

In conclusion, petitioner respectfully suggests a few of the questions that would be, incidentally, decided by a decision in this case:

Is an employer operating in the States of Washington, Oregon and California required to reinsure in California employees who are hired and regularly employed in those states, but who are temporarily called into California for services in the course of their employment? Both in Oregon and Washington an employer is required to insure with the State Fund.

Is the State Fund of Oregon or Washington therefore liable for injuries in the course of the employment while in California, or to put it another way, is the employer liable to the State Fund of those states for employees temporarily

[fol. 83] 15

employed in California, or must the employer arrange for insurance upon bringing the employees into this state?

On the other hand (as has frequently happened when the moving picture industry is taking scenes on location in the desert of Arizona where the Arizona State Fund refuses to carry the insurance under the Arizona Act on account of the high salaries and consequently high compensation payments due in the event of injury), are the moving picture companies required to withhold operations for several days until they can find an insurance carrier willing to insure the risk? No one, up to the present, seems ever to have advised that the employers in such cases may, by contract with the employees, bring them within the exclusive operation of the California Act where they are employed, to the exclusion of the Arizona Act, thereby eliminating the necessity for reinsurance in each state into which an employee may venture.

The Colorado Supreme Court in Platt v. Reynolds, 282 Pac. 264, intimates a few of the difficulties encountered by upholding findings and award of the Industrial Accident Commission identical with those of this case:

"If that be accepted literally, the application of the statute is world wide."

[fol. 84] 16

And suggests

"If Reynolds, under the facts here admitted, be an employee within the terms of our Workmen's Compensation Act, some of the practical problems arising in the administration of such statutes are suggested by: Foreign corporations, of states having no such law, operating in Colorado; Colorado corporations operating in states whose laws are less favorable to the employee; Colorado corporations operating in states whose laws are more favorable to the employee; Colorado corporations operating in foreign countries; actions by different beneficiaries in different jurisdictions."

Petitioner respectfully submits that the petition for writ of review should be granted.

Dated, San Francisco, September 15, 1933.

Respectfully submitted, Pillsbury, Madison & Sutro, Attorneys for Petitioner. F. D. Madison, Francis Gill, of Counsel.

[fols. 85–87] IN SUPREME COURT OF CALIFORNIA

In Bank

[Title omitted]

ORDER GRANTING PETITION FOR REHEARING—Filed Sept. 25, 1933

By the Court:

The Petition for rehearing herein is granted.

Let a writ of review issue in the above entitled matter, returnable before this court in bank, at its courtroom in San Francisco on Tuesday, January 9th, 1934, at ten o'clock A. M.

Dated September 25, 1933.

(Signed) Waste, Chief Justice; Seawell, J., Shenk, J., Curtis, J., Preston, J., Langdon, J., Thompson, J., Associate Justices.

[File endorsement omitted.]

[fol. 88] [File endorsement omitted.]

IN SUPREME COURT OF CALIFORNIA

[Title omitted]

Return to Writ of Review—Filed Jan. 9, 1934

[fols. 89–91] BEFORE INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA

Claim No. 39195

JUAN PALMA, Applicant,

vs.

ALASKA PACKERS ASSOCIATION and QUONG HAM WAH & COMPANY, Defendants

CERTIFICATE OF SECRETARY

I, Frank J. Burke, Secretary of the Industrial Accident Commission, hereby certify that the attached is a full, true

and correct copy of the record of proceedings had before the Industrial Accident Commission in the above entitled cause.

Attest my hand and the seal of the Industrial Accident Commission of the State of California.

Frank J. Burke, Secretary. (Seal.)

Dated at San Francisco, California, this 6th day of November, 1933.

[fol. 92] State of California

Department of Industrial Relations

Industrial Accident Commission

San Francisco Office, 119 State Building

Los Angeles Office, 602 State Building

Application for Adjustment of Claim No. 39195

Filed Aug. 18, 1932

(Applicant) Juan Palma, (Applicant's address) International Hotel, 848 Kearny Street, San Francisco, vs. (Employer) Alaska Packers Association, (Employer's address) 111 California St., San Francisco.

(Employer's insurance carrier) —— ——, (Insurance carrier's address) ——.

1. (Name of employee) Juan Palma, (Age of injured) ——, while employed as a (Occupation at time of injury) laborer, on (Date of injury) June 3, 1932, at (City, town or place where injury occurred) Alaska, by (Name of employer) Alaska Packers Assn., sustained injury arising out of and in the course of the employment, as follows: (explain how injury was received) Box fell upon his stomach, resulting in (State what parts of body were injured and subsequent results) internal injuries.

2. On said date said employer's insurance carrier was (Name of Insurance Company) —— ——.

3. Injured left work on June 3, 1932, and disability continued to (Date could have resumed work) indefinite future date.

4. Last payment of indemnity on ——, 193—; last medical furnished by employer on July 1, 1932.

5. Medical or surgical treatment has been rendered by (Give name and address of all Doctors who treated or examined, and state by whom furnished) Company's physician in Alaska.

6. The employee's date of birth was —— and his wages (Day, week or month) $140.00 per fishing season, working — days per week. (If board, lodging, or other advantages were furnished by the employed without charge, state what and market value of each) Also board and lodging furnished employee by employer of the reasonable value of $35 per mo.

(To Be Used in Death Cases Only)

7. It is claimed that the deceased left the following named dependent —: Name, ——; age, —; relationship, ——; address, ——.

8. A question has arisen with respect to the liability of the employer or insurance carrier, and the general nature of the claim in controversy is: Medical treatment, compensation.

Wherefore, It is requested that a time and place be fixed for hearing and notice given, and that an order or award be made granting such relief as the party or parties may be entitled to.

Dated at San Francisco, California, this 18th day of August, 1932.

(Signature of Applicant or Applicants) J. Palma.

(Agent, or Attorney for Applicant) Elmer P. Delany, (Address) 1344 Russ Bldg., S. F.

NOTE.—Under the provisions of the Workmen's Compensation, Insurance and Safety Laws, the applicant need only state the general nature of the claim in controversy. When application has been filled out and signed by applicant it must be filed with or mailed to the nearest office of the Industrial Accident Commission without delay. Due notice will thereafter be given of the time and place of hearing. Either party may be represented in person, by attorney or other agent.

[fol. 93] BEFORE THE INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA, DEPARTMENT OF INDUSTRIAL RELATIONS

Claim No. 39195

[Title omitted]

ANSWER

Comes now Alaska Packers Association, a corporation, defendant herein, and for answer to the application for adjustment of claim filed herein on August 18, 1932, admits, denies and avers as follows:

I

Denies that on June 3, 1932, applicant was employed as a laborer at Kvichak, Territory of Alaska, by defendant, and denies that the applicant sustained injury arising out of and in the course of said employment by having a box fall upon his stomach, or otherwise, and in this connection defendant avers that the employee Juan Palma, applicant herein, and the defendant were both subject on June 3, 1932, to the provisions of the Workmen's Compensation Act of the Territory of Alaska, Chap. 77 of the Laws of Alaska, 1927, pp. 147-179 and acts amendatory thereof, as hereinafter more fully set forth.

[fol. 94]

II

Denies that applicant suffered internal injuries, or any other injury.

III

Avers that the employee and employer, applicant and defendant herein, were subject at the time of the alleged accident to the provisions and conditions of the Workmen's Compensation Act of the Territory of Alaska, Chap. 77 of the Laws of Alaska, 1927, pp. 147-179 and acts amendatory thereof.

IV

For want of information defendant denies that the injured employee, applicant herein, left work as the result of an industrial injury on June 3, 1932, and denies further that said disability has continued after June 3, 1932.

V

Avers that the employee Juan Palma, applicant herein, was operated on by defendant's medical officer in charge at Kvichak, Alaska, for an intestinal abscess unrelated to an industrial injury, or to injury arising out of and in the course of applicant's employment with the defendant.

VI

For want of information defendant denies that the wage was $140 per fishing season, including board and lodging furnished the applicant by the defendant of the reasonable value of $35 per month.

And for a separate and further defense to the application for adjustment of claim filed herein on August 18, 1932, defendant avers that the applicant was employed as a laborer in the Territory of Alaska, and for any injury arising out of and in the course of applicant's employment with defendant in Alaska the only proper tribunal for adjudicating [fol. 95] applicant's right against the defendant on account of said injury is that provided for by the Workmen's Compensation Act of the Territory of Alaska Chap. 77 of the Laws of Alaska, 1927, pp. 147-179 and acts amendatory thereof, to the provisions of which both the employer and employee were subject at the time of the accident alleged herein, as provided in the contract of employment entered into between the applicant, Juan Palma, and the defendant herein, copy of which is attached hereto and made a part hereof as though set out at length and marked Exhibit "A."

Wherefore, defendant prays that the application for adjustment of claim be dismissed.

(Signed) Pillsbury, Madison & Sutro, Attorneys for Defendant.

[fol. 96] [File endorsement omitted]

BEFORE THE INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA

Claim No. 39,195

[Title omitted]

REPORT OF HEARING—Filed Sept. 17, 1932

Be it remembered that pursuant to orders duly made and entered, this cause came on regularly for hearing before

the Industrial Accident Commission of the State of California, at the offices State Building, San Francisco, California, on Friday, the 16th day of September, 1932, at 10:30 o'clock A. M.

Present:
Wm. J. Cullinan, Referee.
H. Drew, Reporter.
Applicant present and represented by Elmer P. Delaney, Attorney.
Alaska Packers Association represented by Francis Gill, Attorney.

Good cause appearing, it is ordered that Quong Ham Wah Co., 775 Sacramento Street, be joined as party defendant, title amended accordingly, and copy of Report of Hearing be forwarded to such defendant.

The following witness was duly sworn, and his testimony taken, which is not transcribed at this time:

JUAN PALMA, through an interpreter, Samuel M. Balenzuela.
Continued for further hearing.

Hearing, September 16, 1932

[fol. 97] Everything in issue.
The employer also raises the affirmative defense of lack of jurisdiction, in that the applicant is governed by the provisions of the Workmen's Compensation Act of the Territory of Alaska, Chapter 77 of the Laws of Alaska, 1927, and amendments.

Applicant's Exhibit #1, Employee's book, received from Quong Ham Wah Co., in which are supposed to be kept advances made on contract of employment, received by the applicant when he shipped at San Francisco with the Alaska Packers Association.

Defendant's Exhibit #1, Agreement, dated May 13, 1932 (original), between Quong Ham Wah Co. and applicant and the fifty-three others who went aboard the steamer Chirikof.

It is stipulated that the steamer Chirikof is owned by Alaska Packers Association, as well as the cannery in which

applicant was employed, and that applicant was treated at a hospital owned by the Alaska Packers Association.

39,195—Sept. 16, 1932.

Copy of Report of Hearing served upon Quong Ham Wah Company, 775 Sacramento St., September 19, 1932.

[fol. 98] [File endorsement omitted.]

BEFORE THE INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA

Claim No. 39,195

[Title omitted]

TRANSCRIPT OF TESTIMONY—Filed Nov. 1, 1933

Testimony taken in the above-entitled case before the Industrial Accident Commission, at San Francisco, on September 16, 1932, was ordered transcribed on September 27, 1933.

Present: Wm. J. Cullinan, Referee.
H. Drew, Reporter.

Applicant present.
Applicant's Attorney: Elmer P. Delaney.
Attorney for Alaska Packers Associated: Francis Gill.

Testimony, September 16, 1932

[fol. 99] Transcript of Testimony, p. 9, lines 1 to 14, inclusive

Mr. Gill: The Answer admits Mr. Palma was employed as a laborer by defendant, at the beginning of the second paragraph. I have to deny that.

Mr. Delaney: I would like to have the record show that copy of Answer has just been served on me and I have not considered the same yet. If necessary to put in evidence not available this morning, I would like to have the opportunity of doing so.

Referee: All right.

Mr. Delaney: I do not know what the agreement is and I deny due execution of that, whatever it may be.

Referee: Everything is at issue.

[fol. 100] Mr. Gill: And the employer raises the Affirmative Defense of Lack of Jurisdiction, in that the applicant is governed by the provisions of the Workmen's Compensation Act of the Territory of Alaska, Chapter 77 of the Laws of Alaska 1927, and amendments.

The applicant, JUAN PALMA, being duly sworn, through his interpreter Samuel M. Balenzuela, testified as follows:

Referee: I will ask the applicant questions directly, you translate them literally, and retranslate the answers, and do not argue between yourselves.

Mr. Gill: Do you want this citation first? Volume 3, Decisions of the Industrial Accident Commission 1916, Oscar Anderson, applicant, vs. North Alaska Salmon Company, defendant, decided Supreme Court in Bank, December 14, 1916, page 515; referring particularly to page 517, middle of page, Volume 3.

Referee: Juan Palma.

Mr. Delaney: What's the date of that decision? There have been several Supreme Court decisions since that time.

Referee:

Q. What's the date of your birth?

A. I don't recall.

Q. How old are you now?

A. About 52 years of age.

Q. Do you remember what month and what date you were born.

A. I don't know. I don't remember because I left my birth certificate home.

[fol. 101] Q. Have you a birth certificate at home?

A. Yes.

Q. If necessary, you send it to your attorney Mr. Delaney.

A. Yes; it's a long time since I have written home and I don't know whether it is still there.

Q. Where is your home?

A. Jalisco, San Diego, Mexico.

Mr. Gill: I want that.

Mr. Delaney: It's in the record.

Referee:

Q. For whom were you working on June 3, 1932?
A. Well, with the company.
Q. What company?
A. Alaska Packers.
Q. When did you start to work for the Alaska Packers?
A. I shipped from here on the 13th day of May, 1932.
Q. You shipped from San Francisco, you mean?
A. Yes.
Q. (To interpreter.) Did he say that?
A. From here; the 13th day of May, 1932.
Q. Who hired you in San Francisco?
A. The foreman Delatoris.
Q. Did you sign a contract in San Francisco?

Mr. Gill: Here's the original—the seventeenth name.

A. Yes, I signed one.
Q. Where did you sign the contract in San Francisco?
A. At the wharf.
Q. What wharf?
A. I don't remember what wharf, but I signed as I went [fols. 102-108] on the ship.
Q. Did you receive a copy of that contract?
A. No, I didn't receive a copy. They just gave me a book.
Q. Have you got the book?
A. I have the book. (Hands book to Referee.)
Q. When did you get this book?
A. The day I shipped on the boat.

Referee: Offered and received in evidence as Applicant's Exhibit #1, Employee's Book received from Quong Ham Wah Company.

Mr. Gill: That book is for notation of advances made. Mr. Iverson, who is the Superintendent where this man is stationed in Alaska, says this is called an Employee's Book in the ordinary term, in which are supposed to be kept advances made on contract of employment.

Referee (Continuing after interruption by Mr. Gill): Received by the applicant when he shipped at San Francisco with the Alaska Packers.

Mr. Delaney: In view of the defense, it would appear to me this same question went up to the Appellate Supreme

Court and I think we may have to make Quong Ham Wah a party to this action.

Referee: Before the end of the hearing we will see just what his connection was.

(Lines 1 to 22, page 12, omitted.)

Q. What happened to you in Alaska?
A. I was hurt.
Q. When?
A. About the 5th day of June, 1932.
Q. What happened to you on June 5th?
A. The foreman put me to work piling boxes. I was taking empty boxes and was filling them up with cans.
[fol. 109] Q. Was it in San Francisco?
A. Yes, right here in San Francisco.
Q. Was it on Parnassus or Clay street?

Mr. Delaney:

Q. Was it a brick building you went to with *a* cable cars running in front of the place?
A. Yes, cable cars.

Referee:

Q. When did you go to Lane clinic?
A. Quite awhile ago.
Q. Was it right after you got back to San Francisco or some time after?
A. About eight or ten days after I arrived here.

Referee: Anything further, Mr. Delaney?

Mr. Delaney:

Q. Whose boat was it that you went out to Alaska on?

Mr. Gill: It is stipulated that it was the Chirikof, owned by the Alaska Packers, and we will also stipulate that the cannery is owned by the Alaska Packers and that he was treated at the Alaska Packers hospital and by their Doctor.

Mr. Delaney: Will you stipulate that the Chinaman is the agent for the Alaska Packers?

Mr. Gill: No, the Chinaman is an independent contractor; we have a contract, if you want it—an old form running fifteen or twenty years.

Mr. Delaney: What is the nature of the contract? I think we will have to insist upon production of the contract, it being the best evidence.

[fol. 110] Referee: It is ordered that Quong Ham Wah & Company, 775 Sacramento Street, be joined as party defendant.

Mr. Delaney: At this time, Mr. Cullinan, I move that the hearing be continued for the purpose of serving upon Quong Ham Wah notice, unless Mr. Gill will appear for them. Will you appear for them, Mr. Gill?

Mr. Gill: No.

Mr. Delaney: I move that a continuance be granted at this time, the matter to be set for further hearing at a later date, and in the meantime amended application be filed and served upon this defendant, in order to get jurisdiction over them.

Referee: A copy of the Report of Hearing containing the order will be sent to them before further hearing.

Mr. Gill: I will probably appear for them eventually.

Mr. Delaney: Why not do it now then?

Mr. Gill: I will not do it now.

Mr. Delaney: We will have him back for examination.

Mr. Gill: He was examined aboard the boat the day after he signed this paper.

Mr. Delaney:

Q. Was it the day before or after?

A. I had already signed the contract; it was the day after.

Mr. Gill:

Q. It was the Government Doctor who examined you, wasn't it?

A. I don't know whether he was or not.

Q. Was it the Doctor from the Marine Hospital?

A. No, I don't know the Doctors.

Q. Did he do anything but look at your penis?

A. He examined all my body.

Q. Did he tell you it was an examinaion for going into Alaska?

[fol. 111] A. No, he never told me nothing.

Mr. Delaney: I would like to have the original contract. I object to the use of any copies; I insist on the original.

Referee: You can withdraw them afterwards. Defendant's Exhibit No. 1 Agreement, dated May 13, 1932, between Quong Ham Wah and company and applicant and the fifty-three others who went aboard the steamer Chirikof.

Mr. Gill:

Q. Is that your name; did you sign your name there, indicating first page of contract?
A. Yes, that's all I know; I put my name, that's all.
Q. Did you do that on the boat or on the wharf?
A. On the wharf.
Q. What did you do after you signed it?
A. Well, I boarded the boat.
Q. Did you do any work before you got to Alaska?
A. No.
Q. Did you know you were not supposed to do any work before you got to Alaska?

Mr. Delaney: Object to that as irrelevant and immaterial
Referee: Sustained. Ask him what he understood?

Mr. Gill:

Q. Did you talk to Mr. Delatoris at the time you were hired?
A. Yes, I had gone with him before.
Q. Did you talk to Mr. Delatoris at the time you signed this paper?
A. No, I didn't have a talk with him; he said if I wanted to go to Alaska, to go.
Q. Did Mr. Delatoris tell him at any time where he was to work?
A. Well, in Alaska; he told me to go to work in Alaska.

Q. Did you understand from your conversation with Mr. [fol. 112] Delatoris that you were to work in Alaska only?
Mr. Delaney: I object to that as being irrelevant and immaterial; he may call for the conversation.
Referee: Sustained.

Mr. Gill:

Q. Did Mr. Delatoris say anything other than you were to go to work in Alaska?

Referee: Why can't we get what Mr. Delatoris said?

A. No, he didn't tell me anything.

Mr. Delaney:

Q. Tell us what Delatoris told you.

A. He said if I wanted to go to work in Alaska for the Alaska Packers (interruption)——

Q. What did you say to Mr. Delatoris when he asked you that?

A. Well, I told him yes because there was no work here.

Q. And did Delatoris tell you where to go?

Referee: I think it is obvious.

Mr. Delaney:

Q. One other question; I would like to ask him (interruption)——

A. He told me to go to the cannery of the canyon.

Q. Who did Delatoris work for in Alaska?

Mr. Gill: If he knows?

A. For this company, Alaska Packing Company.

Mr. Gill:

Q. How do you know who Delatoris works for?

A. Because he was working in the cannery known as the canyon(?) cannery.

Q. Same as everyone else up there?

A. Well he was the foreman there.

Referee: Anything further at this hearing, gentlemen?

Mr. Gill: The only thing I want to look out for, Mr. Cullinan, is in the event the jurisdiction of the Commission [fol. 113] does hold, I want to plead the affirmative defense of lack of jurisdiction, and be given an opportunity to defend it on its merits. This doctor has submitted certain reports and knows all about the thing.

Mr. Delaney: I have this one suggestion. I know this man is entirely without funds. I might say Mr. Gill was good enough to advance $10.00. I told him the man was practically starving. If we have a continuance for jurisdiction and another continuance for merits (interruption)——

Referee: I don't see why we can't have it all at once.

Mr. Delaney: Why not be prepared?

Mr. Gill: The doctor is at Chowchilla and I would ask that hearing be heard at Chowchilla. We cannot bring (interruption)——

Referee: What about his reports? Aren't they clear as to what he found?

Mr. Gill: Clear as to what he found but not what caused it.

Referee: Why not have a full report ready and save time?

Mr. Gill: It was an intestinal abscess.

Mr. Delaney: I would like to cross-examine the doctor. Must we go to Chowchilla—or must he bring the proof here to the office of the Alaska Packers? It works both ways.

Referee: Case continued for further hearing.

[fol. 114] APPLICANT'S EXHIBIT 1

Sección 11. Así como el único trabajo contemplado por est contrato es de ser ejecutado en el Territorio de Alaska, y si como el contratante ha elegido de ser limitado por las provisiónes—del "Acto Compensante—del os Trabajadores de Alaska," capítulo 25 del os leyes de Alaska, 1929, páginas 46 hasta 79 y enmiendas á eso, los interesados de la segunda parte por este medio consienten, como un incidente de de este contrato de empleo, de aceptar y de ser ceñido por las provisiónes del antedicho Acto Compensante de los Trabajadores de Alaska por cualquiera y todas las injurias originando en ó en el cursò de su empleo y además acuerdan de aceptar como su remedio exclusivo por cualquieras y todas, injurias industriales, las provisiónes del antedicho Acto Compensante de los Trabajadores de Alaska.

J. Palma.

Yo, el abajo firmado, empleado por Quong Ham Wah & Co., me comprometo por el presente contrato, a observar fielmente las reglas y condiciones que en él se consignan durante mi permanencia en la caneria (J) Cannery, en Alaska.

(1a) Yo convengo entrabajar fiel y diligentemente, bajo cualquier condicion, dentro ofuera de la caneria o en cual-

quiera otra que me fuera designada por mi mayordomo; en cualquier tiempo, durante al dia o la noche, domingos y dias de fiestas inclusives.

(2a). Me comprometo a seguir estrictamente, todas las instrucciones que me fuesen dadas por el mayordomo.

(3a). Convengo en permanecer en la careria todo el tiempo que dure mi empleo y a ejecutar todos los trabajos que de mi se exijan.

(4a). Si la caneria fuese destruida por el fuego, no podré exigir del contratista compensación alguna, excepto la cantidad que recibo como anticipo de mi sueldo y el alojo y comidas que me sean suplidas.

(5a). En caso de negarme a trabajar, encontrándome apto para ello, convengo en que se me descuente la cantidad de $5.00, por cada vez que ocurra asi; dicha cantidad será deducida de mi sueldo.

(6a). Si fuese hayado culpable de formar camorras, pelear o en cualquier otra forma alterar el orden a causar disturbios en la caneria, convengo en que se me multe con $10.00, por cada ofensa.

(7a). Convengo en perder todo mi sueldo si fuese eñcontrado culpable de fomentar hüelgas o inculcar descontento entre los demas trabajadores.

(8a). Me comprometo a no formar cuestion o causar disgustos durante las comidas o en cualquier otra parte de la caneria, no destruir o tirar alimento alguno y si contravengo esta regla, perderé de mi sueldo la suma de $5.00, por cada vez.

(9a). Si alguna vez fuese encontrado culpable de robar a la compañía, o al contratista, perderé la cantidad de $50.00, por cada acto.

(10a). Si fuese presiso trabajar en la caneria, despues de las seis de la tarde, en tiempo del empaque del salmon; la compañia conviene en pagar a cada individuo, la cantidad de cincuenta centavos, por cada hora de trabajo.

(11a). Sueldo minimo, por la estacion; ciento cuarenta (140.00) Dollares.

(12a). El contratista conviene en suministrar tres comidas diarias.

(13a). Queda por entendido que la compañía suministrará asistencia médica gratuitamente, excepto en casos de enfermedades venereas o injurias sustentadas en querellas. En uno uotro caso, convengo en pagar la cantidad que el doctor me estipule, por la asistencia que este me preste.

(14a). El contratista se compromete a proporcionarme transportacion gratuita desde San Francisco a Alaska y regreso a San Francisco, excepto en caso de ser despedido de mi trabajo en la caneria, en este caso pagaré yo mismo por mi pasaje.

Y como constancia, declaro estar conforme y ajustarme a las reglas e instrucciones, arriba mencionados.

J. P.

[fol. 115] DEFENDANTS' EXHIBIT 1

Name of relative	Related as	Postoffice address

The information under these headings not being pertinent same is omitted.

[fol. 116] This Agreement, made the 13th day of May, 1932, by and between the undersigned contractor as party of the first part, hereinafter referred as as Contractor, and each of the men named on the reverse side of this agreement who, by signing the same, agree to and accept all the provisions herein contained, as party of the second part, witnesseth:

Section 1. The parties of the second part hereby engage in the service of the said Contractor, and agree and promise, with and to said Contractor for the consideration hereinafter mentioned, that they will go on board vessel at San Francisco and there remain until such vessel sails for Alaska, where they are to be employed; and during the time of such employment they will faithfully, honestly and diligently work and labor in their various capacities, at and about Kvichak or elsewhere in Alaska.

Section 2. The parties of the second part agree to give their whole time and energy to the business of the Con-

tractor, and to work whenever and wherever called upon, day or night (Sundays and holidays not excluded), and to do all kinds of work incident to the canning of salmon, and agree that they may be shifted from any class of work to any other class of work as often as desired.

Section 3. The parties of the second part agree that they will not carry on board vessel any fire-arms or intoxicating liquors, and will allow their person or baggage to be searched for same, without protest, and if any firearms or liquors are found same are to be confiscated. Baggage may also be searched in Alaska before embarking for the return voyage and in San Francisco after return from Alaska. They also agree not to smoke in the warehouses or box factory while in Alaska, and if detected smoking in either of these places, shall pay a fine of $2.50 for the first offense, and $5.00 for each succeeding offense. Any man guilty of drunkenness shall pay a fine to the Contractor of $5.00 for each offense. They also agree not to gamble or play cards for money during the life of this agreement.

Section 4. The parties of the second part agree that any man claiming to be sick or incapacitated for labor shall be examined by the superintendent or the physician of the Alaska Packers Association and if found fit for work, shall immediately go to work, and agrees to pay a fine of $5.00 per day for each and every day he shall absent himself from such work when ordered to go to work.

Section 5. The Contractor agrees to furnish to the parties of the second part, free transportation, together with their lawful baggage, to and from Alaska on vessels furnished by the Alaska Packers Association. The Contractor agrees to furnish the parties of the second part with good, wholesome food three times daily during the term of employment.

Section 6. The parties of the second part agree to clean their living quarters on board vessel and at cannery daily and keep them in sanitary condition, removing all refuse and garbage to a designated place.

Section 7. The Contractor shall be under no obligation to provide transportation for discharged men beyond the first port or sub-port of entry reached on the voyage, or on the

trip of any outside vessel on which passage may be secured for such discharged men, provided the wages due them shall be then paid. Any man who quits work before the end of the season shall be paid at the rate of Twenty ($20.00) Dollars per month, for actual time of service, in lieu of all other compensation.

Section 8. It is mutually agreed that the parties of the second part will not be allowed credit for the purchase of goods or supplies in excess of $20.00 per man.

Section 9. The Contractor agrees to pay to the parties of the second part, at an office selected by the Alaska Packers Association, on the return of the expedition to San Francisco, California, the balance due said parties of the second part in accordance with this contract.

Section 10. It is expressly agreed that neither the foreman in charge of the cannery, nor any other person except the party signing this contract (or some other acting in the same capacity on behalf of said Contractor) shall have the power or authority to modify or change any of the provisions herein contained or to make any new contract covering any part of the subject-matter, and if any changes are made the same must be expressed in writing and duly signed by such party in order to be binding upon the Contractor.

Section 11. As the only labor contemplated by this contract is to be performed in the Territory of Alaska, and as the Contractor has elected to be bound by the provisions of the Alaska Workmen's Compensation Act, Chapter 25 of the laws of Alaska, 1929, pages 46 to 79 and amendments thereto, the parties of the second part hereby agree, as an incident of this contract of employment, to accept and be bound by the provisions of the said Workmen's Compensation Act of Alaska for any and all injuries arising out of and in the course of their employment, and further agree to accept as their exclusive remedy for any and all industrial injuries, the provisions of the said Workmen's Compensation Act of Alaska.

(Signed) Quong Ham Wah & Co., Contractor, by Lem Sen.

fol. 116½] Steamer Chirikoff (J)

	The undersigned agree to the terms of this Agreement, and hereby acknowledge receipt of advance	Age	Nationality	Occupation	Season's wages	Cash on sailing	Hotel bill, pawn tickets, board, cash, season outfit
1	The majority of the	22	Mex.	Laborer	140	$2.50	42.95
2	signatures of the	20	"	"	"	"	83.80
3	Mexicans hired not	24	"	"	"	"	53.55
4	being decipherable,	32	"	"	"	"	51.10
5	same are omitted	29	"	"	"	"	47.20
6	with the exception of						
7	Juan Palma.)						
8	.....	26	"	"	"	"	53.60
9	.....	53	"	"	"	"	48.95
10	.....	52	"	"	"	"	43.60
11	.....	31	"	"	"	"	42.45
12	.....	26	"	"	"	"	51.60
13	.....	51	"	"	"	"	56.20
14	.....	32	"	"	"	"	49.95
15	.....	54	"	"	"	"	45.10
16	.....	40	"	"	"	"	44.50
17	J. Palma.....	52	"	"	"	"	62.60
18	.....	52	"	"	"	"	86.40
19	.....	21	"	"	"	"	55.25
20	.....	28	"	"	"	"	49.60
21	.....	48	"	"	"	"	44.60
22	.....	55	"	"	"	"	50.60
23	.....	51	"	"	"	"	53.60
24	.....	40	"	"	"	"	52.10
25	.....	51	"	"	"	"	56.30
26	.....	31	"	"	"	"	53.60
27	.....	39	"	"	"	"	50.45
28	.....	28	"	"	"	"	48.10
29	.....	52	"	"	"	"	53.10
30	.....	38	"	"	"	"	53.80
31	.....	23	"	"	"	"	41.80
32	.....	57	"	"	"	"	57.40
33	.....	32	"	"	"	"	55.00
34	.....	29	"	"	"	"	51.30
35	.....	40	"	"	"	"	49.60

[fol. 117] [File endorsement omitted]

BEFORE THE INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA

Claim No. 39,195

[Title omitted]

REPORT OF FURTHER HEARING—Filed Oct. 10, 1932

Be it remembered that pursuant to orders duly made and entered this cause came on regularly for further hearing before the Industrial Accident Commission of the State

of California, at the offices State Building, San Francisco, California, on Friday, October 7, 1932, at 2:30 o'clock P. M.

Present:
Frank J. Burke, Referee.
H. Drew, Reporter.
Applicant present and represented by Elmer P. Delaney, Attorney.
Attorney for Defendant employer: Francis Gill.

The following witnesses were duly sworn, and their testimony taken, which is not transcribed at this time: C. A. Iversen, Alfonso Alcalde, Juan Palmo (recalled), through an interpreter, Bill Salcedo.

Request for continuance made by defendant's attorney and opposed by Mr. Delaney, applicant's attorney. Matter will be submitted to the Commission, and both sides notified as to ruling.

Hearing, October 7, 1932

[fol. 118] It is stipulated:

1. That the testimony of Juan Palma, heretofore adduced at a hearing before this Commission on September 16, 1932, shall be considered as testimony against the defendant, Quong Ham Wah & Company, as well as against the Alaska Packers Association.

2. That Quong Ham Wah & Company was not the employer was stipulated by Mr. Gill.

[fol. 119] BEFORE THE INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA

Claim No. 39,195

[Title omitted]

TRANSCRIPT OF TESTIMONY—Filed Nov. 1, 1933

Testimony taken in the above entitled case before the Industrial Accident Commission of the State of California, at San Francisco, on October 7, 1932, was ordered transcribed on September 27, 1933.

Present:

Frank J. Burke, Referee.

H. Drew, Reporter.

Applicant present and represented by Elmer P. Delaney, Attorney.

Attorney for Alaska Packers Association: Francis Gill.

Testimony, October 7, 1932

[fol. 120] Mr. Gill: I want to have an amended Answer on behalf of the Alaska Packers Association served and filed.

Referee: The record will show that there was offered for filing and there will be filed as of today amended Answer of Alaska Packers Association, and Answer of Quong Ham Wah & Co.

Mr. Gill: And in connection with that, may I make offer for the record to produce as early as possible a certificate of the Clerk of the District Court for the Territory of Alaska, Division No. 3, and certificate of the U. S. Commissioner and ex-Officio Recorder, Naknek-Kvichak, and I am making an offer to produce certificates of two officials of the Alaska Packers Association, authorized to do business in the Territory of Alaska, as filed in the office of the District Court, Third Judicial Division, which articles of incorporation and other papers necessary to qualify it to do business in Alaska. That A. J. Dimond is the qualified resident agent of said corporation and was the agent on May 26, 1932, and has been such resident agent continuously since that date——

Referee: Is this an offer of proof?

Mr. Gill: Yes, for the purpose of the record, Mr. Burke.

(Continuing:) —and that under the laws of Alaska, service of process may be made upon A. J. Dimond in all cases arising against the Alaska Packers Association in the Third judicial Division of the Territory of Alaska under and by virtue of the provisions of the Workmen's Compensation Act of the Territory of Alaska and that Kvichak is in the Third Judicial Division.

Referee: Do I understand this will be supplemented by the original?

[fol. 121] Transcript of testimony, page 30, lines 1 to 30, inclusive

Mr. Delaney: For the purpose of the record, it appears that Mr. Gill is speaking in reference to two typewritten copies of documents, apparently affidavits, which he would like to have considered submitted. I object to the introduction of any copies, first of all, on the ground that it is not the best evidence, and secondly, it is incompetent, irrelevant and immaterial, and third, any affidavits made in the Territory of Alaska deprive this applicant of the right of cross-examination, and upon the further ground that any testimony to be taken in this proceeding should be taken before the Commission or a duly authorized officer for the taking of a deposition, and I object to the consideration of the postponement of this hearing. I also respectfully call the Commission's attention to the fact that there have been several continuances to the present date, all at the request of Mr. Gill. This hearing was first set down I think for some date back in the early part of September, and then at Mr. Gill's request, it was continued to the 16th (one continuance of ten days for which I am responsible) and then continued to the present date, upon Mr. Gill's first Answer, to the effect that Quong Ham Wah Company, the other defendant now, was not the agent of the Alaska Packers Association, and I understand now he is willing to stipulate they were mistaken as to the contractual relationship between the Alaska Packers Association and Quong Ham Wah Company, so that all of the delays in this proceeding, so far, have been at the instance, or as a result of request, or a condition which arose because of the defendant, the Alaska Packers Association's position.

[fol. 122] Transcript of testimony, page 34, lines 19 to 23

Mr. Delaney: As I understand now, Mr. Gill, I haven't read your Answer served today, but I understand now it is an admitted fact that the defendant Quong Ham Wah & Co. is the agent and was at all times, described in the application of the applicant on file herein, the agent of the Alaska Packers Association co-defendant, is that correct?

Mr. Gill: That's correct.

[fols. 123-145] Transcript, page 35, lines 2 to 7, inclusive

Mr. Delaney: To simplify the proceeding, might it be stipulated? You, I understand represented the defendant Quong Ham Wah & Company, as its attorney. Are you willing to stipulate the testimony given by Juan Palma may be considered as given against the defendant Quong Ham Wah & Co.?

Mr. Gill: Yes.

[fol. 146] Before the Industrial Accident Commission of the State of California

Department of Industrial Relations

Claim No. 39195

[Title omitted]

Amended Answer of Alaska Packers Association and Answer of Quong Ham Wah & Co.

Come now Alaska Packers Association, a corporation, and Quong Ham Wah & Co., defendants herein, and for answer to the application filed herein on August 18, 1932, admits, denies and avers as follows:

I

Defendant Alaska Packers Association, a corporation, admits that on June 3, 1932, applicant was employed as a laborer at Kvichak, Territory of Alaska, by Alaska Packers Association, but denies that the applicant sustained injury arising out of and in the course of said employment by having a box fall upon his stomach, or otherwise. Quong Ham Wah & Co., defendant above named, denies that on June 3, 1932, or at any other time, applicant was employed by Quong Ham Wah & Co., as a laborer, or in any other [fol. 147] capacity, at Kvichak, Territory of Alaska, or any other place, by it, and denies further that the applicant sustained any injury arising out of or in the course of his employment as stated in the application for adjustment of claim, or otherwise. Defendants Alaska Packers Association and Quong Ham Wah & Co. aver that the applicant

herein, Juan Palma, and both defendants above named were subject on June 3, 1932, to the provisions of the Workmen's Compensation Act of the Territory of Alaska, Chap. 98 of the Session Laws of Alaska, 1923, and acts amendatory thereof, and to the provisions of the Workmen's Compensation Act of the Territory of Alaska, Chap. 25 of the Session Laws of Alaska, 1929, and acts amendatory thereof, as hereinafter more fully set forth.

II

Both defendants above mentioned deny that the applicant suffered internal injury, or any other injury.

III

Both defendants aver that the applicant and defendants Alaska Packers Association and Quong Ham Wah & Co., were subject at the time of the alleged accident to the provisions of the Workmen's Compensation Act of the Territory of Alaska, Chap. 98 of the Session Laws of Alaska, 1923, and Chap. 25 of the Session Laws of Alaska, 1929, and acts amendatory thereof.

IV

For want of information both defendants deny that the injured employee, applicant herein, left work as the result of an industrial injury on June 3, 1932, and deny further that said disability has continued after June 3, 1932.

V

Defendant Alaska Packers Association avers that the applicant, Juan Palma, was operated on by its medical officer in charge at Kvichak, Alaska, for an intestinal ab-cess unrelated to an industrial injury, or to injury [fol. 148] arising out of and in the course of applicant's employment with the defendant Alaska Packers Association.

VI

Defendant Alaska Packers Association admits that the wage was $140 per fishing season, including board and lodging furnished the applicant by the defendant Alaska Packers Association, the reasonable value of which, however, does not amount to $35 per month.

And for a separate and further defense to the application for adjustment of claim filed herein on August 18, 1932, defendants Alaska Packers Association and Quong Ham Wah & Co. both aver that the applicant was employed as a laborer in the Territory of Alaska and for any injury arising out of and in the course of applicant's employment with the defendants in Alaska both the Alaska Packers Association and Quong Ham Wah & Co. and the employee, Juan Palma, were subject to the provisions of the Workmen's Compensation Act of the Territory of Alaska, Chap. 98 of the Session Laws of Alaska, 1923, and Chap. 25 of the Session Laws of Alaska, 1929, and acts amendatory thereof; that Chap. 98 of the Session Laws of Alaska, 1923, provides as follows:

"Section 22. No action for the recovery of compensation hereunder shall be brought in any court holden outside of the judicial division in which the injury occurred, out of which the right to compensation arises, except in cases where service can not be had on the employer in the judicial division where the injury occurred. No action for the recovery of compensation hereunder shall in any case be brought in any court outside of the Territory of Alaska, except in cases where it is not possible to obtain service of summons upon the defendant in said Territory, and in all such cases the plaintiff must plead and prove his inability to obtain service of summons upon the defendant within the Territory of Alaska."

that Chap. 25 of the Session Laws of Alaska, 1929, provides as follows:

"Section 25. No action for the recovery of compensa-
[fol. 149] tion hereunder shall be brought in any court holden outside of the judicial division in which the injury occurred, out of which the right to compensation arises, except in cases where service can not be had on the employer in the judicial division where the injury occurred. No action for the recovery of compensation hereunder shall in any case be brought in any court outside of the Territory of Alaska, except in cases where it is not possible to obtain service of summons upon the defendant in said Territory, and in all such cases the plaintiff must plead and prove his inability to obtain service of summons upon the defendant within the Territory of Alaska."

Defendants further aver that Quong Ham Wah & Co. was the agent and contractor for the defendant Alaska Packers Association for the employment of the applicant, Juan Palma.

II

Defendants aver that Quong Ham Wah & Co., as the agent for and on behalf of the Alaska Packers Association, on May 13, 1932, entered into a contract of hire with the applicant, Juan Palma, by the terms of which the applicant, Juan Palma, agreed, as an incident of the employment as follows:

"Section 11. As the only labor contemplated by this contract is to be performed in the Territory of Alaska, and as the Contractor has elected to be bound by the provisions of the Alaska Workmen's Compensation Act, Chapter 25 of the laws of Alaska, 1929, pages 46 to 79, and amendments thereto, the parties of the second part hereby agree, as an incident of this contract of employment, to accept and be bound by the provisions of the said Workmen's Compensation Act of Alaska for any and all injuries arising out of and in the course of their employment, and further agree to accept as their exclusive remedy for any and all industrial injuries, the provisions of the said Workmen's Compensation Act of Alaska."

III

Defendant Alaska Packers Association on June 3, 1932, and at all times pertinent to the issues involved herein was and now is qualified to do business in the Territory of Alaska, Third Judicial Division; that it has filed in the office of the Clerk of the District Court, Third Judicial Division, at Valdez, Alaska, its articles of incorporation [fol. 150] and other papers necessary to qualify it to do business in Alaska; that A. J. Dimond is the duly appointed and qualified agent of said Alaska Packers Association and that he was such resident agent continuously since said date; that under the laws of Alaska the said A. J. Dimond is the person upon whom service of process may be made in all causes arising against the Alaska Packers Association in the Third Judicial District, Territory of Alaska; that Kvichak, Alaska, is in the Third Judicial Division of the Territory of Alaska; that the District Court of the Third

Judicial Division, Territory of Alaska, is the only proper tribunal for adjudicating applicant's right against the defendant Alaska Packers Association, or against the defendant Quong Ham Wah & Co. on account of the injury alleged in the application for adjustment of claim herein as provided by the provisions of the Workmen's Compensation Act of the Territory of Alaska, Chap. 98 of the Session Laws of Alaska, 1923, and acts amendatory thereof, and Chap. 25 of the Session Laws of Alaska, 1929, and acts amendatory thereof, and by a contract of employment entered into herein between the applicant and the defend t Quong Ham Wah & Co., acting as the agent for and on behalf of the defendant Alaska Packers Association as herein above mentioned.

Wherefore, defendants pray that the application for adjustment of claim be dismissed.

(Signed) Pillsbury, Madison & Sutro, Attorneys for Defendants.

[fol. 151] BEFORE INDUSTRIAL ACCIDENT COMMISSION OF CALIFORNIA

CERTIFICATE OF U. S. COMMISSIONER

UNITED STATES OF AMERICA,
Territory of Alaska,
Naknek-Kvichak Precinct, ss:

This certifies that neither the Alaska Packers Association, a corporation organized under the Laws of California, nor any of its employees, nor Quong Ham Wah & Company, nor Fred Jensen nor Juan Palma, nor any other employees of either the Alaska Packers Association, a corporation, nor Quong Ham Wah & Company, had, on May 26, 1932, nor at any time subsequent thereto, filed Notice of Rejection of the terms of the Workmen's Compensation Act of the Territory of Alaska (Chapter 25 of the Session Laws of Alaska of 1929) in accordance with the provisions thereof; and that on May 2[illegible]1932, and ever since said date, the Alaska Packers Association, a corporation, and Quong Ham Wah & Co. of 775 Sacramento Street, San Francisco, California, and all their employees, including the said Juan Palma and Fred Jensen,

have been subject to all the terms, provisions and conditions of said Workmen's Compensation Act of the Territory of Alaska, Chapter 25, Session Laws of Alaska, 1929.

Witness my hand and official seal this 5 day of October, 1932.

William B. Regan, U. S. Commissioner and ex-Officio Recorder, Naknek-Kvichak Recording Precinct, Territory of Alaska. (Seal.)

[fol. 152] BEFORE INDUSTRIAL ACCIDENT COMMISSION OF CALIFORNIA

CERTIFICATE OF CLERK OF DISTRICT COURT

UNITED STATES OF AMERICA,
Territory of Alaska, ss:

I, Robt. W. Taylor, Clerk of the District Court for the Territory of Alaska, Third Judicial Division, do hereby certify that the Alaska Packers Association, a corporation organized under the laws of California, whose principal address is 111 California Street, San Francisco, California, is qualified to do business in the Territory of Alaska, Third Judicial Division, and that it has filed in the Office of the Clerk of the District Court, Third Judicial Division, its articles of incorporation and other papers necessary to qualify it to do business in Alaska; and that A. J. Dimond is the duly appointed and qualified resident agent of the said corporation and that he was such a resident agent on May 26, 1932, and has been such resident agent continuously since said date; and that under the laws of Alaska the said A. J. Dimond is the person upon whom services of process may be made in all causes arising against the Alaska Packers Association in the Third Judicial Division, Territory of Alaska.

I further certify that Kvichek, Alaska, is in the Third Judicial Division.

Witness my hand and the seal of the District Court for the territory of Alaska, Third Judicial Division at Valdez, Alaska, this 30th day of September, 1932.

Robt. W .Taylor, Clerk of the District Court for the Territory of Alaska, Div. No. 3. (Seal.)

[fol. 153] [File endorsement omitted]

BEFORE THE INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA

Claim No. 39195

JUAN PALMA, Applicant,

vs.

ALASKA PACKERS ASSOCIATION AND QUONG HAM WAH & Co., Defendants

Elmer P. Delaney, attorney for applicant.

Pillsbury, Madison & Sutro (Francis Gill), attorneys for defendants.

FINDINGS AND AWARD—Filed April 17, 1933

An application for adjustment of claim for compensation having been filed herein, and all parties having appeared, and the matter having been regularly heard before Wm. J. Cullinan and Frank J. Burke, Referees, and submitted for decision, this Commission now makes its Findings and Award as follows:

Findings of Fact

1. Juan Palma, applicant, while employed as a laborer on or about June 3, 1932, in Alaska, by Alaska Packers Association, received an injury arising out of and occurring in the course of his employment, as follows: Said applicant was struck on the abdomen by falling box or boxes, resulting in internal injuries.

2. That said contract of employment between said Juan Palma and Alaska Packers Association was entered into in the State of California, and both employer and employee were subject to the provisions of the Workmen's Compensation, Insurance and Safety Act of 1917.

3. That on said 3rd day of June, 1932, said Quong Ham Wah and Company was not the employer of said applicant, and is not a proper party defendant in the above-entitled proceding, and is entitled to be dismissed herefrom.

[fols. 154-156] 4. Said employer paid to said applicant his wages from May 13, 1932, to and including August 11, 1932.

5. Said injury caused temporary total disability continuing from June 3, 1932, indefinitely, entitling the applicant to $15.13 a week. Said employer having paid said applicant his regular wages from May 13, 1932, to and including August 11, 1932, disability indemnity compensation should be paid at the rate of $15.13 a week beginning August 19, 1932, and continuing until the termination of disability or the further order of this Commission. The foregoing weekly benefit is based upon average weekly wages of $23.28 a week.

6. The applicant is in need of further medical treatment to effect a cure and/or relief of his said injury, and the same should be furnished by the employer.

7. Elmer P. Delaney, attorney for the applicant, is entitled to a lien against unpaid compensation due to applicant for the reasonable value of his services in the sum of $35.00.

Award

In accordance with the foregoing Findings, Award is hereby made in favor of Juan Palma, applicant, against Alaska Packers Association, defendant, of the sum of $15.13 a week beginning August 19, 1932, and continuing until the termination of disability or the further order of this Commission, less the sum of $35.00 payable to Elmer P. Delaney as his attorney's fee.

It is ordered that the employer furnish further medical treatment to the applicant to effect a cure and/or relief of his said injury.

It is further ordered that Quong Ham Wah and Company be and it is hereby relieved of all liability by reason of the claim herein asserted and dismissed herefrom.

Industrial Accident Commission of the State of California, T. A. Reardon, Commissioner, Frank J. Burke, Deputy Commissioner. (Seal.)

Dated at San Francisco, California, this 17th day of April, 1933.

GW—39195.

[fol. 157] [File endorsement omitted]

IN SUPREME COURT OF CALIFORNIA

In Bank

S. F. No. 14950

ALASKA PACKERS ASSOCIATION, Petitioner,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA AND JUAN PALMA, Respondents

OPINION BY THE COURT—Filed July 5, 1934

This is a proceeding to review an award of compensation made by the Industrial Accident Commission in favor of Juan Palma against the Alaska Packers Association, his employer.

On May 13, 1932, Juan Palma, a nonresident alien, entered into a contract of employment on board the steamer Chirikof in the harbor of San Francisco, with the Quong Ham Wah Co., agent for the petitioner, the Alaska Packers Association, by which he agreed to work for the petitioner during the salmon canning season at or about Kvichak in the territory of Alaska. The Alaska Packers Association agreed to transport Palma to Alaska and back to San Francisco at the close of the season. He was to be paid on his return to San Francisco, at a monthly rate, less any advances made. Sec-ion 11 of the contract, signed by Palma, and some fifty other workers, on board the Chirikof, reads as follows:

"Section 11. As the only labor contemplated by this contract is to be performed in the Territory of Alaska, and as the Contractor has elected to be bound by the provisions of tne Alaska Workmen's Compensation Act, Chapter 25 of the laws of Alaska, 1929, pages 46 to 79 and amendments [fol. 158] thereto, the parties of the second part hereby agree, as an incident of this contract of employment, to accept and be bound by the provisions of the said Workmen's Compensation Act of Alaska for any and all injuries arising out of and in the course of their employment and

further agree to accept as their exclusive remedy for any and all industrial injuries, the provisions of the said Workmen's Compensation Act of Alaska."

Palma was treated on two occasions and was finally operated on in petitioner's hospital in Kvichak, having left work on June 3, 1932. He presented no claim for compensation in Alaska, but received his regular wages until August 11. Upon his return to San Francisco, and on August 18, 1932, he made application to the California Industrial Accident Commission for an adjustment of his claim on the ground that his disability had resulted from an injury arising out of and in the course of the employment and had been caused by an empty box falling against his stomach.

Petitioner filed an answer to the application, admitting the employment, but denying that the applicant sustained an injury arising out of the employment and setting up that both the applicant and the petitioner were subject, at the time of the alleged injury, to the Workmen's Compensation Act of Alaska, chapter 98 of the Session Laws of Alaska, 1923, and chapter 25 of the Session Laws of Alaska, 1929, and acts amendatory thereof; and further, that petitioner was qualified to do business in Alaska, had filed in the office of the clerk of the district court, third judicial division, at Valdez, Alaska, its articles of incorporation and other papers qualifying it to do business in Alaska, and that it maintained, as required by law, its resident agent for the purpose of receiving service of papers in the third judicial division; that the district court in that division was the only proper tribunal for the settlement of [fol. 159] Palma's claim by reason of the Alaska act and the contract of employment, section 11 of which is set out above; and that the California Commission was without jurisdiction. These allegations are supported by an affidavit of the United States commissioner of the Kaknek-Kvichak precinct that neither the applicant nor the Alaska Packers Association had filed a notice of rejection of the terms of the Alaska Workmen's Compensation Act in accordance with the provisions thereof and that on May 26, 1932, and ever since the Alaska Packers Association and all their employees had been subject thereto, and by an affidavit of the clerk of the district court of the third judicial division that the Alaska Packers Association had quali-

fied to do business in the territory of Alaska by filing the necessary papers and maintained a resident agent for service in that division.

While the petitioner questions the sufficiency of the evidence to support the finding that the injury arose out of the employment, the main attack is directed toward the jurisdiction of the Industrial Accident Commission to entertain this proceeding for compensation under the California Workmen's Compensation Act. The respondent commission cites in support of its claim of jurisdiction section 27(a) and 58 of the California act, which provide as follows:

Section 27(a). "No contract, rule or regulation shall exempt the employer from liability for the compensation fixed by this act. * * *"

Section 58. "The commission shall have jurisdiction over all controversies arising out of injuries suffered without the territorial limits of this state in those cases where the injured employee is a resident of this state at the time of the injury and the contract of hire was made in this state, and any such employee or his dependents shall be entitled to the compensation or death benefits provided by this act."

[fol. 160] Petitioner urges that this injury is within the exclusive territorial jurisdiction of Alaska and hence not within the territorial jurisdiction of California; and, second, that section 58 of the California act, above quoted, is unconstitutional for the reason that it denies full faith and credit to the Alaska statute, trespasses upon the exclusive power of congress to make laws regulating the employer-employee relationship in the territory of Alaska, and constitutes a denial of due process and equal protection of the law under amendment XIV of the federal Constitution, inasmuch as it is an unreasonable regulation of the right to make private contracts of employment and an attempt to regulate a relation or status existing beyond the territorial limits of the state. The problem can be narrowed to some extent. In the first place, the California Commission cannot apply and administer the Alaska act. Section 25 of Chapter 25 of the Session Laws of Alaska, 1929, provides that "No action for the recovery of compensation hereunder shall be brought in any court holden outside of the judicial division in which the injury

occurred, out of which the right to compensation arises, except in cases where service cannot be had on the employer in the judicial division where the injury occurred. No action for the recovery of compensation hereunder shall in any case be brought outside of the Territory of Alaska, except in cases where it is not possible to obtain service of summons upon the defendant in said Territory, and in all such cases the plaintiff must plead and prove his inability to obtain service of summons upon the defendant within the Territory of Alaska." In the second place, if California has not attempted an extraterritorial regulation of the incidents of employment, petitioner's argument relative to invasion of the exclusive jurisdiction of the federal government to regulate employment in Alaska must fail; nor is there any denial of due process and equal protection by reason of extraterritoriality.

[fol. 161] It is fundamental and has been well said that: "In general our law is territorial and not personal. This does not mean that rights and duties can be enforced only in the territory of the jurisdiction which created them; it does mean that such law does not ordinarily purport to create rights and impose duties by reason of acts, to which legal consequences may be annexed, occurring beyond the geographical confines of its territory." (See Angell, Recovery Under Workmen's Compensation Acts for Injury Abroad, 31 Harv. L. Rev. 619.) However, the California act does purport to establish compensation for injuries received abroad in a certain class of cases where (the other general requirements of compensation of course being present): (1) the injured employee is a resident of this state at the time of injury, and (2) the contract of hire was made in this state. The first condition has been nullified by the decision in Quong Ham Wah Co. v. Industrial Accident Commission, 184 Cal. 26, 192 Pac. 1021 (certiorari denied by the United States Supreme Court, 255 U. S. 445, 65 L. Ed. 723), which held that the federal Constitution extended the benefits of the act to nonresidents also. The second condition remains and squarely presents the question whether the making of the contract of employment in this state is a satisfactory and sufficient basis for the creation by the California legislature of the right of compensation for an injury received beyond its borders, even though the services contracted for were to be performed wholly outside the state, a consideration ap-

parently not urged upon the court in the Quong Ham Wah Co. case.

Where the duty to pay compensation is contractual, as under the optional acts, the rights of the injured party, wherever the injury is received, may, according to recognized principles, be controlled by the law of the place of contract. However, the California act is compulsory and it is now settled that the right to, and the liability for, compensation established by it are not founded upon contract [fol. 162] but are statutory rights and duties arising from the employer-employee relationship and are imposed by the law as incidents to that status. (North Alaska Salmon Co. v. Pillsbury, 174 Cal. 1, 162 Pac. 93; Quong Ham Wah Co. v. Industrial Accident Com., supra; 31 Harv. L. Rev. 619.) Consequently a decision upholding the so-called extraterritorial effect of our act cannot be placed upon this ground.

In Post v. Burger & Gohlke, 216 N. Y. 544, 111 N. E. 351, this extraterritorial effect was given the New York act on the basis of the fiction of a "constructive contract", on the theory that the legislature had the power "to compel a contract between employer and employee that is extraterritorial in effect". This case is cited in Quong Ham Wah Co. v. Industrial Accident Com., supra, which described the liability as not the mere regulation of a status or imposition of a tort liability but as "quasi ex contractu", and sustained an award under section 58 of the act for an injury received outside the state on the ground that the statute assumed to extend its effect "only to those cases where the contract of hire was made in this state," and that consequently it is "not an attempt to create an obligation merely as an incident to a status but is, in form and substance, a genuine regulation of contracts subject to the sovereignty of the state." The court further said: "The contract creates a relationship under the sanction of the law and the same law attaches as an incident thereto an obligation to compensate for injuries sustained abroad amounting to a sort of compulsory insurance. The legislature may lawfully impose that right and duty upon those operating under a contract subject to the legislative power, and no principle of law is defeated by attaching to such contracts the same duties and rights as incidents to acts abroad that are lawfully imposed as incidents to the same acts occurring within the geographical limits of the state."

[fol. 163] While there is much apparent conflict on this question in the various jurisdictions of the country, most of the cases turn upon the construction of the particular statute involved and the legislative intent as shown by its provisions. Though not controlling, in view of the legislature's express declaration that our statute shall apply to injuries received abroad where the contract of hire is made within the state, these cases are instructive of the social policy behind such declaration and of the principles upon which it may be sustained. Where the statute is elective the contractual theory has been applied and, where the statute is compulsory, as well as in some cases where the elective feature of the optional act has not been particularly relied upon, the basis of the power to impose such an incident upon the employer-employee relationship seems to be jurisdiction of that status at the time of its creation. Although there are many cases holding that particular compensation statutes were not intended to cover injuries received abroad, none has been cited or discovered which holds an express legislative declaration of that policy to be ineffective. (See note, 3 A. L. R. 1351 (collecting and discussing cases) and supplemental notes in 18 A. L. R. 292; 28 A. L. R. 1345; 35 A. L. R. 1414; 45 A. L. R. 1234; 59 A. L. R. 735; 82 A. L. R. 709; also 31 Harv. L. Rev. 619, supra, and 37 Harv. L. Rev. 375.) We are of the opinion that the creation of the status under the laws of this state is a sufficient jurisdictional basis for the regulation of that relationship within this state and the creation of incidents thereto which will be recognized within this state, even though the relation was entered into for purposes connected solely with the rendition of services in another state. If this were not not so there could be no compensation for an injury arising out of and in course of the employment but occurring before the jurisdiction in which the services [fol. 164] were to be performed had been entered, or where that jurisdiction had no compensation statute. This would seriously interfere with the policy of the act, which is to charge to the industry those losses which it should rightfully bear, and to provide for the employee injured in the advancement of the interests of that industry, a certain and prompt recovery commensurate with his loss and, in so doing, lessen the burden of society to care for those whom industry has deprived, either temporarily or permanently, of the ability to care for themselves. Having a

social interest in the existence within its borders of the employer-employee relationship, the state may, under its police power, impose reasonable regulations upon its creation in the state. That the imposition of such conditions is in line with the present-day policy in compensation legislation cannot be doubted. Similar provisions have been upheld and enforced in Falvey v. Sprague Meter Co., 111 Conn. 693, 151 Atl. 182; Roberts v. I. X. L. Glass Corp., 259 Mich. 644, 244 N. W. 188; Pederzoli's Case, 269 Mass. 550, 169 N. E. 427; McLaughlin's Case, 274 Mass. 217, 174 N. E. 338, and Migue's Case, 281 Mass. 373, 183 N. E. 847, even though the services were to be performed entirely in another state. It is true that these acts have elective features, but in the Massachusetts cases the decisions were not placed upon that ground but upon the legislative intent to cover such situations, the constitutionality of the provision not being discussed although the question was raised. We consider this a reasonable regulation having a direct relation to the protection of the public, especially under the facts of the present case, since the employment was to both commence and terminate in this state. Palma was, under the contract of employment, to be transported from San Francisco to Alaska and back, and was to be paid off on his return to San Francisco.

[fol. 165] Additional points made by the petitioner are that on conflict of laws principles, the Alaska act should govern the determination of Palma's claim, and that the failure of the commission to recognize the Alaska act, when pleaded as a defense to this application, was a denial of the full faith and credit to which it was entitled under the federal Constitution.

It should, first, be observed that in Quong Ham Wah Co. v. Ind. Acc. Comm., supra, the court was primarily concerned in determining the validity of section 58 with reference to Article IV, section 2, of the federal Constitution, and the first clause of section 58, which extended the benefits of the act in connection with injuries abroad only to residents of this state. The consideration of the nature of the "extraterritorial" effect to be given the act and the language quoted above was in answer to the argument that the obligation placed on the employer was on which could only be imposed by the law of the place of injury or of the place of the servant's domicile, and hence that the quali-

fication of residence was a jurisdictional limitation and not discriminatory. It does not appear that the law of the place of injury was set up as a defense or that the questions thus presented were urged upon the court in that case.

This phase of the problem is essentially one in conflict of laws. The jurisdiction of both Alaska and California may be sustained, the one upon the basis of control of the status at the time of the injury, the other upon the basis of control at its inception. (See American Law Institute, Restatement of Conflict of Laws, Proposed Final Draft No. 4, secs. 434 and 436.) We have been referred to many decisions of state courts, principally later New York decisions modifying Post v. Burger & Gohlke, supra, which apply the rule that where the contract is for services to be performed exclusively abroad and the injury is received there, the law of the place of injury will be applied. (Cameron v. Ellis [fol. 166] Const. Co., 252 N. Y. 394, 169 N. E. 622. See, also, MacKesson Fuller-Morrison Co. v. Ind. Comm., 212 Wis. 507, 250 N. W. 396, and discussion of cases in the notes above cited.) But for the most part these cases, as already indicated, deal with the construction of various acts as intending or not intending a recovery of compensation for injury received abroad where the contract, made in the state of the forum, contemplated an exclusively foreign employment. In American Mut. Liability Inc. Co. v. McCaffrey, 37 Fed. (2d) 870, the court applied the rule that a contract made in one state, to be wholly performed in another, is governed by the law of the state where the performance is to be had. In Ford, Bacon & Davis v. Valentine, 64 Fed. (2d) 800, which did not decide the question, the problem is stated with regard to optional laws: "Under elective laws the obligation to make compensation exists because the parties to the employment have expressly or impliedly agreed to it, surrendering their rights to other adjustment for injuries. Where, as in this case, the entire performance of the employment is to be in another state, a serious question may exist whether the parties did not really contract with reference to the law of that other state, which ought accordingly to enter into the contract rather than the law of the place of its making. * * * Many courts, however, disregarding the place where the services are to be rendered, have considered that an elective compensation act of the place of contract follows the employee wherever he

renders service under the contract, and is to be enforced in suits for injuries in other states unless that compensation act itself provides against its applying beyond its own state, or unless the public policy of the forum or a lack of necessary machinery prevents its enforcement."

Our act being compulsory, neither line of reasoning can be applied. The parties cannot be said to have contracted with reference to the law of either jurisdiction other than [fol. 167] as the laws of this state enter into and are a part of every contract made here and, as by going into another jurisdiction to perform services under a contract of hire, they submit themselves to its laws. The attempted selection of the Alaska act as the governing law in section 11 of the contract is not available to the petitioner. A contract attempting to avoid the liability imposed by the California act is invalid. (Sec. 27(a) of the Workmen's Compensation, Insurance and Safety Act of 1917; Terminal Rys. v. Indus. Acc. Comm., 180 Cal. 121, 127, 179 Pac. 386; Hines v. Indus. Acc. Comm., 182 Cal. 359, 188 Pac. 277.)

Petitioner cites as particularly applicable the following comment following section 434 of the Proposed Final Draft No. 3 of the Restatement of Conflict of Laws, American Law Institute: "The case of employment through an employment agency in one state where the entire business is carried on in another state, and the applicant is merely sent to the principal office to report, is specially treated. In such a case the relation is regarded as established not by the action of the agency, but by the workman reporting for work at the principal office of the business, the transaction of the employment office not being regarded as definitive hiring. In that case the compensation act of the state where the workman reported for duty governs liability for injuries." The Restatement on Conflict of Laws has not reached its final form. The foregoing comment on section 434 does not reflect the general rule, but rather an exception to or modification of the general rule announced or suggested for approval by the institute in section 434 of the latest Proposed Draft No. 4, published March 22, 1934, as follows:

"Compensation Under Act of State of Employment

"A workman who enters into a contract of employment in a state in which a Workmen's Compensation Act is in

force can recover compensation under the Act in that state [fol. 168] for bodily harm arising out of and in the course of employment, although the harm was suffered in another state, unless the Act provides in specific words or is so interpreted as to apply only to bodily harm occurring within the state."

Section 58 of the California act is in accord with the foregoing proposed final draft, and, whether it be in the exact form to be finally adopted, undoubtedly it reflects the final trend of the law on the subject. If the proposed final draft should have any bearing on the present case, the general rule as suggested, and not a comment noting an exception or modification of the general rule, would be the more persuasive.

Furthermore, in the light of the foregoing "comment" we regard the employment agreement pursuant to which the applicant went abroad the Chirikof and was transported to Alaska, as "definitive." The parties both signed the contract. It apparently contained all the important conditions of the employment. The transportation and the payment of wages, which were both important incidents of the contract of hire, were not to be performed in Alaska. Moreover, whatever may be the correct rule in conflict of laws to be applied in the ordinary case of a contract of employment made in this state, to be performed exclusively in another jurisdiction, such contracts as the present one, which hire itinerant labor in large groups to be transported out of the state for seasonal work and returned to this state at the end of the season, constitute a special class of employment contracts in which the state of hiring has an interest at least as substantial as that of the state in which the temporarly and seasonal work is to be performed. The laborer injured in the course of such employment is, by the terms of his contract of hire, to be returned to that state to become a charge upon it if he cannot obtain compensation or take care of himself. To leave the applicant to his [fol. 169] remedy in Alaska in such a case would create a great hardship. In this class of employment the employer exercises great control over the presence of the applicant in either jurisdiction. Should he stay to prosecute his claim in the jurisdiction of the injury it is quite likely that he would lose his return transportation.

We come now to the question of the recognition to be accorded the Alaska act. The United States Supreme Court has held in a case where the contract of employment was made in Vermont, the principal employment was located there and the Vermont statute was elective and clearly exclusive (i. e., precluded, without the necessity of construction, any recovery under the law of another state): that it was a denial of full faith and credit for the New Hampshire court to refuse to allow the Vermont act to be set up as a defense to an action in New Hampshire, where the employee was working temporarily at the time of his injury. (Bradford Electric Light Co. v. Clapper, 286 U. S. 145, 52 Sup. Ct. 571.) In Ohio v. Chattanooga Boiler and Tank Co., 289 U. S. 439, 53 Sup. Ct. 663, it was held that it was not a denial of full faith and credit to apply the compulsory law of the state of injury where the contract, made in Tennessee, provided that the workmen should also serve in other states and the Tennessee act had been interpreted by the Tennessee courts as not precluding recovery in another state. The conclusion reached herein is not inconsistent with those cases, which have left open the question of what law is applicable where the state of injury is the state where the major incidents of the employment are located although the contract is made elsewhere. Nor do we here attempt to decide that question except in the special class of cases now before us. In addition, we may add that it is not ordinarily a denial of full faith and credit to refuse to apply the law of another jurisdiction on conflicts principles. (See note 46, Harv. L. Rev. 291.) A fortiori if it [fol. 170] cannot by its own terms be administered by the forum in which it is pleaded.

Since we have concluded it was not error for the California Industrial Accident Commission to entertain this proceeding, it becomes necessary to consider the claim that there is not sufficient evidence to sustain the findings of the commission that the injury arose out of the employment. The company doctor, who was the only one to examine the applicant before the operation, or to make a thorough examination at any time, testified that in his opinion the disability was not caused by an injury but was due to natural causes. Doctor Quinn, on the basis of whose testimony the award was made, examined the patient upon his return to San Francisco and gave his opinion, basing his conclusion "on the reports rendered by the attending physicians",

that the condition was of traumatic origin. The rule invoked by petitioner is that of Winthrop v. Ind. Acc. Comm., 213 Cal. 351, 2 Pac. (2d) 142, and Nielsen v. Ind. Acc. Comm., 125 Cal. App. 210, 13 Pac. (2d) 517, to the effect that "there was no true conflict in the evidence where that on one side consists of opinions based on facts not shown by the record to exist, while that on the other side was based upon facts actually shown to exist or rested on the testimony of physicians who had actually treated and examined the patient". In the Nielsen case the discredited evidence "rested solely in the opinions of physicians who had not treated, examined or seen the patient, but who based their opinions upon a statement of the case which in numerous particulars was not a full and complete statement".

Doctor Quinn's opinion is introduced by the following words: "Discussion of the case: Owing to this man's ignorance it is impossible to obtain any accurate idea of the condition for which he was operated upon, and it necessary [fol. 171] for me to base my conclusion on the reports rendered by the attending physicians." This brings the case within the rule of McNamara v. Ind. Acc. Comm., 130 Cal. App. 284, 289, 20 Pac. (2d) 53: "The conclusions of the latter witness were based on the facts testified to by Dr. Tiffany and on an extended history of the case. It thus appears that the two experts took into consideration the same facts, but reached different conclusions."

On the second appeal of the Nielsen case it was said by this court, speaking of the Winthrop case: "There was no intent to hold, and it was not decided, that the opinion of experts who had no personal knowledge of the facts may not raise a conflict with the testimony and opinion of those whose conclusions are drawn from a personal examination of the injured employee. The opinion of experts based on hypothetical statements of the facts in the record is competent evidence. The weight of such evidence is for the commission's determination." (Nielsen v. Ind. Acc. Comm., 87 Cal. Dec. 252.)

The award is affirmed.

[fol. 172] [File endorsement omitted]

[fol. 173] Table of Contents

	Page
Preliminary statement	2
I. Respects in which the decision violates the Federal Constitution	11
(A) Undue burden on interstate commerce	13
(B) Due process and equal protection	15
II. The exclusive powers of the United States Congress	18
III. The final restatement of the American Law Institute	20
Conclusion	29

[fol. 174] Table of Authorities Cited

	Page
Boston & Maine R. Co. v. Armburg, 285 U. S. 234	15
Bradford Electric Light Co. v. Clapper, 286 U. S. 145, 52 Sup. Ct. 571	4. 6
Davis v. Farmers' Co-op. Equity Co., 262 U. S. 312, 67 L. Ed. 996, 43 Sup. Ct. 556	15
Hooper v. California, 155 U. S. 648	20
International Milling Co. v. Columbia Transp. Co., Sup. Ct. L. Ed. Advance Opinions, Vol. 78, p. 935	15
Murray v. Joe Garrick Co., 291 U. S. 315, 54 Sup. Ct. 432	7
New York Central Railroad Co. v. Winfield, 244 U. S. 147	8, 11
Ohio v. Chattanooga Boiler and Tank Co., 289 U. S. 439, 53 Sup. Ct. 663	4,7
Spencer, Kellogg v. Hicks, 285 U. S. 502	11
Alaska Workmen's Compensation Act, Section 10	6
American Law Institute, Topic 3, Workmen's Compensation:	
Sections 398 to 403, chap. 9 of the Restatement	25
Proposed Draft No. 4, Section 434	24
Proposed Final Draft No. 3, Section 434	24
California Workmen's Compensation Act:	
Sections 29(b) and 29(c)	3
Section 27(a)	17
Section 58	4
[fol. 175] Constitution of the United States:	Pages
Article I, Section 10, clause 1	10, 19
Article II, Section 2, clause 2	10, 19

	Page
Article III, Section 2	11
Article IV, Section 1	5
Fourteenth Amendment	15, 22
Statutes 1917, Section 29, p. 831 as amended by Statutes 1929, p. 551	24
Statutes 1933, p. 2005, chap. 751	28
Statutes 1929, p. 914, chap. 530	28
Statutes 1933, p. 438, Sections 438, 439	28
Vermont General Laws (1917), chap. 241, Section 5774	6
Willoughby on The Constitution of the United States, 2nd ed., pp. 318-20	19
p. 446	20

[fol. 176] IN SUPREME COURT OF CALIFORNIA

[Title omitted]

PETITION FOR A REHEARING—Filed July 25, 1934

To the Honorable William H. Waste, Chief Justice, and to the Associate Justices of the Supreme Court of the State of California:

Alaska Packers Association respectfully petitions for a rehearing after per curiam decision in the above entitled proceeding on certiorari affirming the award of respondent Industrial Accident Commission against petitioner, and for grounds thereof avers as follows:

[fol. 177] 2

Preliminary Statement

As preliminary to presenting the points raised on rehearing, we respectfully direct the court's attention to the following considerations resulting from the decision of July 5th:

We have not suggested and the court was not asked to decide that an injury occurring beyond the geographical limits of the state cannot be made the basis of a right to compensation enforceable within the state. Our conten-

tions on the original petition and in this petition for rehearing are not so antisocial. The point made in the opinion that if the California Act were not given extraterritorial application "there could be no compensation for an injury arising out of and in the course of the employment but occurring before the jurisdiction in which the services were to be performed had been entered, or where that jurisdiction had no compensation statute" presents a question that does not and in fact could not arise, because, if there were no compensation statute in the jurisdiction where the labor were to be performed, there could be no question of giving full faith and credit to a nonexistent act with which there could be no conflict. The court's apprehension, therefore, is purely non sequitur.

On the other hand, to hold that the California Act has compulsory application to injuries arising out of and oc-

[fol. 178] 3

curring in the course of a purely foreign employment exposes any of the 296,000 employers in the State of California who operate outside the state either to double liability for an injury due to no fault of the employer, or, in the alternative, requires such employers to insure in both states the payment of compensation for such industrial injury upon pain of the penalties, both civil and criminal, provided by section 29(b) and section 29(c), respectively, of the California Workmen's Compensation Act.

It was with this in mind that we suggested page 9 of the petition for rehearing after denial of petition for writ for review:

"If California is to stretch its jurisdiction to penalize petitioner for doing what Alaska requires petitioner to do, then an unjust situation is obviously created, which California law should be construed to modify, not to justify. Clearly, this modification is accomplished by holding section 58 of the California Workmen's Compensation Act elective in so far as it appertains to purely foreign employments, by holding that while California may compel acceptance of its act whenever California has a political, social or economic interest in the employee-employer relationship, it may not go further and, regardless of the will of the parties, impose its provisions for injuries outside its borders

[fol.179] 4

whenever the parties have specifically agreed to be bound by the act in force at the place of employment. The rule contended for is in consonance with the rule of construction adopted by *all* state courts dealing with compulsory Workmen's Compensation Acts, and with *all* of the decisions dealing with elective compensation acts under which it is regularly held that the provisions of an elective act become a part of the contract of employment."

The suggested construction of section 58 would relieve California employers of the penalties provided by the acts of other states for failure to insure the payment of compensation under the respective workmen's compensation acts—of Oregon, Washington, Arizona, Nevada and New York, for example.

An expression by this court on the extent of the operation of section 58, which could obtain the sanction of the courts of these respective states, would be heartily welcomed by California employers generally.

Likewise, the court's statement "that the conclusion reached herein is not inconsistent with" Bradford Electric Light Co. v. Clapper, 286 U. S. 145, 52 Sup. Ct. 571, and Ohio v. Chattanooga Boiler and Tank Co., 289 U. S. 439, 53 Sup. Ct. 663, is equally non sequitur if the effect of the decision is, as it patently is, to avoid the conclusions therein reached.

[fol. 180] 5

In the first of these cases, Clapper in his lifetime had elected to be bound by the Vermont Act and when, after his death, his administratix attempted an election of remedies under the New Hampshire Act, the Supreme Court of the United States, held: The employer, having pleaded the Vermont contract as an affirmative defense to the action in New Hampshire was entitled to assert the Vermont Act, which was a part of that contract, under Article IV, section 1, of the constitution, citing the specific provision of the Vermont Act, to which Clapper had assented:

" 'Right to Compensation Exclusive. The rights and remedies granted by the provisions of this chapter to an

employee on account of a personal injury for which he is entitled to compensation under the provisions of this chapter, shall exclude all other rights and remedies of such employee, his personal representatives, dependents or next of kin, at common law or otherwise on account of such injury. Employers who hire workmen within this state to work outside of the state, may agree with such workmen that the remedies under the provisions of this chapter shall be exclusive as regards injuries received outside this state by accident arising out of and in the course of such employment, and all contracts of hiring in this state shall be presumed to include such an agreement.' "

[fol. 181] 6

Vt. Gen. Laws (1917), c. 241, sec. 5774,—regarding which Mr. Justice Brandeis said:

"The question is whether the fact that the injury occurred in New Hampshire leaves its courts free to subject the employer to liability as for a tort. * * * or must they give effect to the Vermont Act, and to the agreement implied therefrom, that the only right of the employee against the employer, in case of injury, shall be the claim for compensation provided by the statute?"

Bradford Electric Light Co. v. Clapper, supra, pp. 153, 4.

We deem it clear from the decision in that case that neither the result nor the question involved would have been in any respect altered had the New Hampshire Act been compulsory.

In the case at bar, the Alaska Act, to which Palma had expressly assented, provided, in practically identical terms with the Vermont Act:

"Section 10. The right to compensation for an injury and the remedy therefor granted by this Act shall be in lieu of all rights and remedies as to such injury now existing either at common law or otherwise, and *no rights or remedies,* except those provided for by this Act, *shall accrue to employees entitled to compensation under this Act while it is in effect;* nor shall any right or remedy, except those provided for by this Act accrue to the personal or

[fol. 182] 7

legal representative, dependents, beneficiaries under this Act, or next of kin of such employee." (Italics ours.)

In Ohio v. Chattanooga Boiler and Tank Co., supra, Mr. Justice Brandeis again speaking for the court held that under the full faith and credit clause the State of Ohio was not required to give the Tennessee Act any greater effect that it was given by the courts of Tennessee; that the Tennessee Workmen's Compensation Act did not preclude recovery from a Tennesee employer under the Compensatinon Act of Ohio on account of an injury suffered in Ohio, though the contract of employment was made in Tennessee. Neither of these cases admits of the possibility that a recovery under either or both statutes could be sustained.

The non sequitur reasoning from these two cases leaves unexplained the inapplicability of the legal principles announced in Murray v. Joe Garrick Co., 291 U. S. 315, 54 Sup. Ct. 432, decided by the United States Supreme Court on February 5, 1934, regarding which the opinion is silent. We again urge that case upon the court as fixing as definitely and unequivocably the inapplicability of a compulsory state Workmen's Compensation Act to injuries in-

[fol. 183] 8

curred on federal territory, as New York Central Railroad Co. v. Winfield, 244 U. S. 147, fixed the inapplicability of a compulsory state Workmen's Compensation Act to injuries sustained by railway employees in interstate commerce.

The opinion in the case at bar, while recognizing that Palma had an election:

"* * * the jurisdiction of both Alaska and California may be sustained * * *,"

and while recognizing that Palma had elected to be bound by the Alaska Act, nevertheless, in the same breath, holds that he was, notwithstanding his election, entitled to recover under the California Act.

If this is so, obviously a recovery under the Alaska Act could be no defense to a proceeding instituted under the California Act. If the defense of the Alaska Act is not availing, likewise a judgment under that act is equally unavailing.

A few of the legal implications of the court's decision of July 5, 1934, which we could not have foreseen, are:

(1) Double liability of California employers to employees injured while working outside of the state;

(2) Mutilation of both the Alaska and California Acts by expunging therefrom the exclusive liability provisions of each;

[fol. 184] 9

(3) Or else, by rendering both acts applicable, i. e., that the employee, having an election of remedies and having elected his remedy, the denial of that right to elect and of the employer's right to hold the employee to that election.

It is in view of the implications of the court's decision that we now urge the following points for annulling the award of respondent Commission against petitioner in favor of respondent Palma:

(I) By requiring an employer to insure twice a single industrial risk, or, in the alternative, to defend twice, if not to pay twice, the California Workmen's Compensation, Insurance and Safety Act is unconstitutional and void as in contravention of the Fourteenth Amendment to the Constitution of the United States because it deprives petitioner of its property without due process of law; that it is unconstitutional and void as in violation of article 1, section 8, clause 3 of the Constitution of the United States because it amounts to a regulation of commerce among the states, of which sections, respectively, petitioner claims the benefit and protection;

(II) By fixing the power of nonresident aliens to enter into contracts performable anywhere in the territorial

[fol. 185] 10

limits of the United States, the California Workmen's Compensation, Insurance and Safety Act is unconstitutional and void as in contravention of article 1, section 10, clause 1, and article 2, section 2, clause 2 of the Constitution of the United States, of which sections, respectively, petitioner claims the benefit and protection.

(III) By finding Palma's employment commenced and terminated in California, this court assumed facts not shown,

but to the contrary expressly disproved by the record presented on return of the writ of review. The finding is of a jurisdictional fact and when made without evidence and in the face of undisputed evidence to the contrary is tantamount to taking petitioner's property without due process of law. Palma's employment did not commence until he disembarked in Alaska and the employment terminated when he embarked at Kvichak on August 4, 1932. Palma boarded the steamer "S. S. Chirikoff" as a passenger and petitioner's liability to Palma en route to and from Alaska, if not limited to that provided by the general maritime law was presumptively covered by the Alaska Act under the prevailing "going and coming rule."

[fol. 186] 11

See Spencer Kellogg Co. v. Hicks, 285 U. S. 502, at pp. 512-3:

"Kellogg & Sons undertook the interstate carriage of passengers by water on a launch operated by its servants. This was a maritime matter. The ferriage was for the facilitation of the company's business and for its convenience as well as that of the employees. The injury to the passengers resulted from negligence of the company's agents in the navigation of the launch. It was a maritime tort. The rights and obligations of the parties depended on and arose out of the maritime law. A proceeding to impose liability for such a tort is a cause in admiralty within the meaning of Article III, Sec. 2 of the Constitution, triable in the United States courts sitting in admiralty."

I

Respects in Which the Decision Violates the Federal Constitution

In New York Central Railroad Co. v. Winfield, supra (pp. 166-8), Brandeis, J., dissenting, said:

"*Methods and means of Workmen's Compensation Laws:*

The principle underlying Workmen's Compensation Laws is the same in all the States. The methods and means by which that principle is carried out vary materially. The

[fol. 187] 12

principle is that of insurance, the premiums to which are contributed by employers generally. How the insurance fund shall be raised and administered; what the scale of compensation or relief shall be; how the contributing groups of employers shall be formed; whether or not a state fund shall be created; whether the individual employer shall be permitted to become a self-insurer; whether he shall be permitted to deal directly with the employee in making settlement of the compensation to be awarded; on all these questions the laws of the several States do and properly may differ radically.

What methods and means the State shall adopt in order to provide compensation for injuries to citizens or residents where Congress has left it free to legislate, rests (subject to constitutional limitations) wholly within the judgment of the State. It might conclude, in view of the hazard involved, that no one should engage in the occupation of railroading without providing against the financial consequences of accidents through contributing an adequate amount to an accident insurance fund. It might conclude that it was wise to make itself the necessary contributions to such a fund, out of monies raised from general taxation. Or it might conclude, as the State of Washington did, that the fairest and wisest form of taxation for the purpose was to impose

[fol. 188] 13

upon the employer directly the duty of making the required contributions—relying upon the laws of trade to effect, through the medium of transportation charges, an equitable distribution of the burden. The method last suggested is pursued in substance also by the State of New York. In its essence the laws of the States are the same in this respect, as is shown in Mountain Timber Co. v. Washington, 243 U. S. 219. It is misleading to speak of the new obligation of the employer to contribute to compensation for injuries to workmen as an increase of the 'employer's liability.' It is not a liability for a violation of a duty. It is a direct—a primary—obligation in the nature of a tax. And the right of the employee is as free from any suggestion of wrong done to him as the new right granted by Mothers' Pension Laws."

(A) Undue Burden on Interstate Commerce

Aside from the fact that Palma elected his forum—that provided by the Alaska Act—upon reliance of which petitioner employed him and sent him to that forum, from which he voluntarily departed without instituting proceedings, the record discloses the following:

"Referee: Q. What's the date of your birth?
Palma: A. I don't recall.
Q. How old are you now?
A. About 52 years of age.

[fol. 189] 14

Q. Do you remember what month and what date you were born?
A. I don't know. I don't remember because I left my birth certificate home.
Q. Have you a birth certificate at home?
A. Yes.
Q. If necessary, you send it to your attorney Mr. Delaney.
A. Yes; it's a long time since I have written home and I don't know whether it is still there.
Q. Where is your home?
A. Jalisco, San Diego, Mexico."
(Tr. p. 3, lines 2-17.)

It was shown by Mr. Iverson, Palma's superintendent, that petitioner is unable to present a defense outside the territory of Alaska where all witnesses are readily available. True, Palma circumvented this objection by saying there were no witnesses to his accident; that he was alone when it happened. Nevertheless, there were a number of Palma's fellow servants with whom he was in constant association and this testimony that in that association he never uttered a word about a box falling on him, coupled with his failure to report an injury while receiving treatment and operation at petitioner's hospital by petitioner's doctor, might have cast sufficient doubt upon his uncorroborated story as to defeat his recovery.

[fol. 190] 15

Under these circumstances the Supreme Court of the United States has held that it is an undue burden on Inter-

state Commerce to require a defendant to submit to an action having no relation to the locality where it is brought, even where the action itself is transitory, which this proceeding is not.

Mr. Justice Cardozo, in the opinion of the United States Supreme Court on May 28, 1934, in International Milling Co. v. Columbia Transp. Co., Sup. Ct. Law. ed. Advance Opinions, vol. 78, p. 935, reviews the two lines of cases commencing with Davis v. Farmers' Co-op. Equity Co., 262 U. S. 312, 67 L. ed. 996, 43 S. Ct. 556, concluding "the groups are clearly marked, and also the reason for the grouping." A review of this decision is instructive.

See, also, Boston & Maine R. Co. v. Armburg, 285 U. S. 234, wherein the possibility of imposing a burden on Interstate Commerce by State Workmen's Compensation Acts is discussed by Mr. Justice Stone in delivering the opinion of the court.

(B) Due Process and Equal Protection

The California act is comparable in almost every respect to the New York act mentioned above, after which it was patterned, i. e., California has relied "upon the laws of

[fol. 191] 16

trade to effect * * * an equitable distribution of the burden."

There are seventy-two canners of Alaska salmon, of which five are California corporations, the remaining sixty-seven being Oregon and Washington corporations. Oregon and Washington have compulsory state insurance but do not assert jurisdiction over injuries occurring in Alaska. Oregon and Washington canners pay no contribution on their Alaska workers to the Oregon and Washington compulsory compensation insurance funds. Consequently, the additional burden of being required to insure the payment of compensation under the California act imposes on the five California canners a burden which must necessarily enter into the cost of the final product, thus placing these five at a distinct disadvantage in a highly competitive business. It makes no difference whether the additional burden is in the form of insurance for the payment of compensation or the actual payment of compensation. In either event, due to the freedom of the sixty-seven Oregon and Washington

canners from double liability for compensation over the five California corporations who are subject to the penalties of the California act for failing to insure, a burden is placed upon the product of the California canners which is not

[fol. 192] 17

equitably disputed in the industry. The theory, therefore, upon which the court based its opinion of July 5th, i. e., "to charge to the industry those losses which it should rightfully bear, and to provide for the employee injured in the advancement of the interest of that industry" has been misapplied to the case at bar. On the other hand, the additional requirement of several liability in both forums for the same injury, in effect might quite possibly constitute a prohibition of petitioner's particular business whether that prohibition can properly be imputed as the general legislative purpose or not. In this aspect of the situation, therefore, the California Workmen's Compensation Insurance and Safety Act as applied in this case constitutes an undue burden on interstate commerce, and to the extent of the insurance premiums exacted of the California canners on their Alaska payroll deprives the California canners, of whom petitioner is one, of their property without due process of law.

Further, by denying petitioner the right to hold Palma to his election (section 11 of the contract), under section 27(a) of the California Act as applied in this case, petitioner is to the extent of the award, estimated at $7500, deprived of its property without due process of law.

[fol. 193] 18

II

The Exclusive Powers of the United States Congress

Possibly, the business of employing fifty cannery workers resident in the State of California for work solely within the territorial limits of Alaska is of such a nature and importance as to justify the exercise of the California police power in its regulation. No doubt citizens of the State of California "may be exposed by such contracts to misfortune from which they might otherwise be legitimately protected" by the laws of California. The contract here, however, is that

of a nonresident alien over whom the state exercised only temporary and de facto control, while Palma was here as a transient.

"Sec. 181. *Domiciled Aliens.* A distinction is made in practically all countries between domiciled and non-domiciled aliens, with reference to the legal burdens that may be imposed upon them, and the civil and political rights that they may enjoy. * * * When so domiciled, all matters other than political, which relate to his personal status, are regulated by the *lex domicilii.* Thus the local law governs *his power to enter into contracts.* * * *" (Italics ours.)

"Sec. 182. *Aliens Not Domiciled.* An alien passing through the United States, or for any purpose only temporarily in the country, is held fully subject to local criminal

[fol. 194] 19

law. He is also able to enter into civil contracts which may be enforced against him to the extent of any property that he may have within the United States."

Willoughby on The Constitution of the United States, 2nd ed., pp. 318-20.

Aliens not domiciled are generally not entitled by the doctrines of international law to the same protection of person and property that is enjoyed by the citizens of a state in which domiciled aliens are resident. Therefore, because of the responsibility resting upon the Federal Government under article 1, section 10, clause 1, and article 2, section 2, clause 2, the treaty-making provisions of the Constitution, as well as by reason of the general principles of international law, the congress is necessarily and properly the only source of law affording civil protection to nonresident aliens. In the case at bar, the congress has amply provided for Palma. It provided him with an adequate remedy and sufficient recovery for industrial injury.

"Sec. 249. *Territorial Governments Are Congressional Governments.* The governments established in the Territories by Congress act as agencies of Congress, in the same sense that an administrative board acts as the agent of the law-making body that creates it. As such congressional

[fol. 195] 20

agencies, the Territorial governments are not considered to be parts of the General Government established or directly provided for by the Constitution."

Willoughby, supra, p. 446.

Thus, it will be seen that the United States Congress alone may properly police the employee Palma anywhere within the territorial limits of the United States, because

(1) He was a nonresident alien, free to contract like all the Mexicans signing the contract of employment for work in Alaska;

(2) He was injured in Alaska, a territory over which the congress has exclusive control, and whose law provided an exclusive remedy for the alleged injury.

III

The Final Restatement of the American Law Institute

Hooper v. California, 155 U. S. 648, was decided upon the strength of the fact that Mott, for whom Hooper acted, was a resident of California and that section 439 of the Penal Code made it a misdemeanor to procure "any insurance for a resident of this state * * * etc.," i. e., the majority

[fol. 196] 21

opinion turned upon the protection afforded its residents by the state.

Mr. Justice Harlan, with whom concurred Mr. Justice Brewer and Mr. Justice Jackson, in dissenting, suggested the solution to the problem presented by section 27(a) as here applied:

"In my opinion the statute, in its application to the case now presented, is an illegal interference with the liberty both of Mott and of Hooper, as well as an abridgment of the privileges, not of a foreign corporation, but of individual citizens of other States through whom the policy in question was obtained. Johnson & Higgins are pursuing one of the ordinary callings of life in the city of New York. It is a lawful calling as much so as that of a merchant, grocer, manufacturer, tailor, or shoemaker. It cannot prop-

erly be characterized as in itself or by the necessary results of the business hurtful to the community. They have as much right to pursue their calling in California, by agent, as they have to pursue it in New York. Of course, this calling, indeed every calling of life, is subject to the power of the State within whose limits it is pursued, to regulate it in any mode that does not violate the essential rights of liberty and property guaranteed by the Federal Constitution against hostile state action. If it were conceded that California could require every one acting within its limits

[fol. 197] 22

as an agent for others, whether insurance brokers, merchants, grocers, manufacturers, tailors, or shoemakers, to take out a license and pay a tax as such agent—such regulations being made applicable, in similar circumstances, to all agents doing business in California—it would not follow that it could absolutely prohibit individual citizens of other States *or its own people* from conducting there, by agents, an ordinary calling not in itself immoral or dangerous to the public. The enjoyment upon terms of equality with all others in similar circumstances of the privilege of pursuing an ordinary calling or trade, is an essential part of liberty as guaranteed by the Fourteenth Amendment. Powell v. Pennsylvania, 127 U. S. 678, 684. Among the inalienable rights possessed by American citizens is, as Mr. Justice Field has said, 'the right of men to pursue any lawful business or vocation in any manner not inconsistent with the equal rights of others, which may increase their prosperity or develop their faculties, so as to give to them their highest enjoyment.' *Butchers' Union Co.* v. *Crescent City Co.*, 111 U. S. 746, 757, 764. And, in the same case, Mr. Justice Bradley said: 'I hold that the liberty of pursuit—the right to follow any of the ordinary callings of life—is one of the privileges of a citizen of the United States'. So in *Jacob's case,* 98 N. Y. 98, 106: 'One may be

[fol. 198] 23

deprived of his liberty and his constitutional rights thereto violated, without the actual imprisonment or restraint of his person. Liberty, in its broad sense as understood in this country, means the right, not only of freedom from actual servitude, imprisonment or restraint, but the right of one to use his faculties in all lawful ways, to live and

work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or avocation.'

In many States there are individuals or firms whose business it is to negotiate loans for others. Often, if not generally, the money is in the hands of corporations for investment. These corporations may not have agents outside of the State in which they are located. What would be thought of a statute making it a crime for any one in the State which enacted it to procure for one of its residents, and through a firm of brokers in New York, a loan of money from a corporation of another State that did not propose to do business by agent, or elsewhere than at the place of its creation? The State, it may be, could forbid any foreign corporation, whose business it is to invest money for itself and others, from doing business in California, by agent, or could require as a condition of its doing business there, by agent, that the corporation or agent should give such bond with surety as may be prescribed.

[fol. 199] 24

But it could not be made a crime for one in that State to procure a loan of money for a resident of that State, through individual citizens of another State, although the money should be obtained from a foreign investment company not proposing to transact business by agent in the State where the borrower resides and from which the application to borrow comes."

The court, in its opinion of July 5th, has made it a penal offense for a corporation or other employer of labor, who has not insured the payment of compensation under the California Act to make a contract of employment in this state with a non-resident alien, through an employment agent, whose fees were borne entirely by the employer, for service to be performd wholly outside the state.

Sec. 29(c) Stats. 1917, p. 831, as amended by Stats. 1929, p. 551.

The court in its opinion peremptorily dismisses the comment on Section 434 of Proposed Final Draft No. 3 of the Restatement of Conflict of Laws, American Law Institute as not reflecting "the general rule but rather an exception to or modification of the general rule announced or sug-

gested for approval by the institute in Section 434 of the latest Proposed Draft No. 4".

[fol. 200] 25

We have procured a transcript of topic 3, Workmen's Compensation, sections 398 to 403, inclusive, chapter 9, of the Restatement, with the admonition that "the official volume will not be available for several months."

Under the very first section the exception is recorded. However hastily considered this topic 3 may appear to be, it calls attention to the considerations quoted above from Hooper v. California, supra.

The court in its finding:

"Furthermore, in the light of the foregoing 'comment' we regard the employment agreement pursuant to which the applicant went aboard the Chirikof and was transported to Alaska, as 'definitive'."

has gone beyond the record.

"Mr. Gill: Q. Did you do any work before you got to Alaska?

Palma: A. No.

Q. Did you know you were not supposed to do any work before you got to Alaska?

Mr. Delaney: Object to that as irrelevant and immaterial.

Referee: Sustained. Ask him what he understood?

Mr. Gill: Q. Did you talk to Mr. Delatoris at the time you were hired?

A. Yes, I had gone with him before.

Q. Did you talk to Mr. Delatoris at the time you signed this paper?

[fol. 201] 26

A. No, I didn't have a talk with him; he said if I wanted to go to Alaska, to go.

Q. Did Mr. Delatoris tell him at any time where he was to work?

A. Well, in Alaska; he told me to go to work in Alaska.

Q. Did you understand from your conversation with Mr. Delatoris that you were to work in Alaska only?

Mr. Delaney: I object to that as being irrelevant and immaterial; he may call for the conversation.

Referee: Sustained.

Mr. Gill: Q. Did Mr. Delatoris say anything other than you were to go to work in Alaska?

Referee: Why can't we get what Mr. Delatoris said?

A. No, he didn't tell me anything.

Mr. Delaney: Q. Tell us what Delatoris told you.

A. He said if I wanted to go to work in Alaska for the Alaska Packers (interruption) • • •

Q. What did you say to Mr. Delatoris when he asked you that?

A. Well, I told him yes because there was no work here.

Q. And did Delatoris tell you where to go?

Referee: I think it is obvious.

Mr. Delaney: Q. One other question; I would like to ask him—— (interruption)

[fol. 202] 27

A. He told me to go to the cannery of the canyon.

Q. Who did Delatoris work for in Alaska?

Mr. Gill: If he knows?

A. For this company, Alaska Packing Company.

Mr. Gill: How do you know who Delatoris works for?

All because he was working in the cannery known as the canyon (?) cannery.

Q. Same as everyone else up there?

A. Well he was the foreman there."

(Tr. p. 14, line 16 to p. 15, line 29.)

This is respondent Palma's undisputed evidence. The contract is of record (Exhibit "C") signed by Palma and the agent.

As to whether the "hire of itinerant labor in large groups to be transported out of the state for seasonal work and returned to this state at the end of the season, constitute a special class of employment contracts in which the state of hiring has an interest at least as substantial as that of the state in which the temporary and seasonal work is to be performed" would seem to depend upon the correlative

rights and duties of the state and the laborer. We have diligently searched for some benefit to nonresident aliens from the old age security or pauper laws of the state. We have found none; to the contrary we have found that on

[fol. 203] 28

application for admission to the county hospital nonresidents and aliens are summarily rejected. See Stats. 1933, p. 2005, chap. 761; Stats. 1929, p. 1914, chap. 530; Stats. 1933, p. 438, sections 438, 439.

The state's interest in itinerant laborers is confined to appropriating petitioner's property under the shadow of section 27(c), upon evidence found to be sufficient to create a conflict but which is inherently incapable of belief—evidence of a doctor who made a cursory examination at the request of and presumably at the expense of respondent Palma's attorney, for the sole purpose of creating a conflict with petitioner's doctor who treated, operated and relieved the man from what was confessedly an intestinal disorder of years standing, and upon a record showing petitioner was denied the right to produce its doctor in the usual course of the Commission's procedure, with the admonition to get a letter from him, with which Palma's attorney could solicit the medical fraternity with the hope of finding a man willing to dispute its conclusions. That letter so procured is the only support in the record for the finding that Palma's condition was remotely affected by the alleged accident.

[fol. 204] 29

Conclusion

In the original petition for writ of review, and in the petition for rehearing after denial of that petition, other considerations not here mentioned, were urged upon the court. We here ask leave to urge each of them anew, and incorporate herein as though set out at length the contents of both the foregoing petitions.

Dated, San Francisco, July 25, 1934.

Respectfully submitted, Pillsbury, Madison & Sutro, Attorneys for Petitioner. F. D. Madison, Francis Gill, of Counsel.

[fol. 205] IN SUPREME COURT OF CALIFORNIA

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—Filed Aug. 2, 1934

By the COURT:

The petition for a rehearing herein is denied.
Dated August 2, 1934.

(Signed) Waste, Chief Justice.

[File endorsement omitted.]

[fols. 206-217] IN SUPREME COURT OF CALIFORNIA

Bank

San Francisco, No. 14950

ALASKA PACKERS ASSOCIATION, Petitioner,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA AND JUAN PALMA, Respondents

On review from the Industrial Accident Commission of the State of California.

JUDGMENT

The above entitled matter having been heretofore fully argued, and submitted and taken under advisement, and all and singular the law and premises having been fully considered, it is ordered, adjudged and decreed by the Court that the Award of the Industrial Accident Commission of the State of California in the above entitled cause be and the same is hereby affirmed.

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify that the foregoing is a true copy of an original judgment entered in the above

entitled cause on the 5th day of July, 1934; and now remaining of record in my office.

Witness my hand and the seal of the Court, affixed at my office, this 6th day of August, A. D. 1934.

B. Grant Taylor, Clerk, by I. M. Johnson, Deputy.
(Seal.)

[fol. 218] SUPREME COURT OF THE UNITED STATES

October Term, 1934

[Title omitted]

ORDER ALLOWING APPEAL—Filed Sept. 4, 1934

The appellant in the above entitled suit, having prayed for the allowance of an appeal in this proceeding to the Supreme Court of the United States from the judgment made and entered in the above entitled cause by the Supreme Court of the State of California on the 5th day of July, 1934, and from each and every part thereof, and having presented and filed its petition for appeal, assignment of errors, and prayer for reversal, pursuant to the statutes and rules of the Supreme Court of the United States in such case made and provided:

It is now here ordered that an appeal be, and the same is hereby allowed to the Supreme Court of the United States from the Supreme Court of the State of California in the above entitled cause, as provided by law; and

It is hereby further ordered that the clerk of the Supreme Court of the State of California shall prepare and certify a transcript of the record, proceedings and judgment of this cause and transmit the same to the Clerk of the Supreme Court of the United States, so that he shall have the same in the said court within sixty days of this date.

[fols. 219-232] And in view of the fact that appellant has on deposit with the Treasurer of the State of California a good and sufficient bond in the sum of twenty thousand dollars ($20,000) for the payment of any award made by the Industrial Accident Commission of the State of California against appellant, it is further ordered that no bond should be required from appellant on account of the appeal

herein allowed, other than security for costs on appeal, which security is here fixed in the sum of five hundred dollars ($500).

Dated August 23, 1934.

William H. Waste, Chief Justice of the Supreme Court of the State of California.

[File endorsement omitted.]

[fol. 233] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed Oct. 13, 1934

The appellant states that the points upon which it intends to rely in this court in the above entitled cause are as follows:

Point No. 1: The Supreme Court of the State of California erred in refusing to give effect to the contract of hire between appellant and appellee Palma by which the parties agreed as an incident of the contract of hire (since the only labor contemplated by the agreement was to be performed in the Territory of Alaska) to accept as the exclusive remedy for industrial injury the provisions of the Alaska Workmen's Compensation Act. In so holding, the Supreme Court of the State of California denied full faith and credit to a public act of the Territory of Alaska (chap. 25 of the Session Laws of Alaska, 1929) and failed to give effect to sections 905 and 906 of the Revised Statutes (28 [fol. 234] U. S. C. A., sections 687 and 688).

Point No. 2: The Supreme Court of the State of California erred in holding that, because appellee Industrial Accident Commission of the State of California could not apply and administer the Alaska Act, appellee Palma was without remedy in California, unless the California Workmen's Compensation, Insurance and Safety Act was applied.

Point No. 3: The Supreme Court of the State of California erred in refusing to hold that the imposition of liability by the State of California for injuries incurred by a non-

resident alien in the Territory of Alaska in the course of a wholly Alaskan employment transgresses upon the exclusive jurisdiction of the United States Congress.

Point No. 4: The Supreme Court of the State of California erred in refusing to hold that section 27(a) of the California Workmen's Compensation, Insurance and Safety Act, as applied in this case, is an arbitrary and unreasonable regulation of the right to make private contracts of employment.

Point No. 5: The Supreme Court of the State of California erred in refusing to hold that section 27(a) of the California Workmen's Compensation, Insurance and Safety Act, as applied in this case, amounts to a regulation and tax upon the relation or status existing beyond the territorial limits of the state.

Point No. 6: The Supreme Court of the State of California erred in refusing to hold that the hiring of a nonresident alien laborer through an employment agency in the State of California for services exclusively within the Territory of Alaska constitutes commerce within the exclusive jurisdiction of the United States upon which the State of California may not levy a tax or impose a burden.

[fol. 235] The appellant further states that the following parts of the transcript of record are necessary for the consideration of the case and that they, and each of them, are deemed necessary to be printed:

	Transcrit page
Petition for writ of review	1–9
Answer to petition for writ of review	33–50
Reply to answer to petition for writ of review	51–64
Order denying petition for writ of review	65
Petition for rehearing after denial of petition for writ of review	66–84
Order granting petition	85
Of the return to writ of review:	
Title page	88
Certification	89
Application for adjustment of claim	92
Answer	93
Report of hearing of September 16, 1932	96–97
Transcript of testimony—Juan Palma	98–102
Transcript of testimony—Juan Palma	112–118

	Transcript page
Certificate of United States Commissioner	151
Certificate of Clerk of the District Court	152
Findings and award	153–154
Opinion of the Supreme Court of California	157–171
Petition for rehearing	172–204
Order denying petition for rehearing	205
Remittitur	206
This statement of points to be relied upon and designation of parts of record to be printed.	

Appellant specifically states that appellee's petition for rehearing, transcript of record, pages 172 to 204, and the order of the Supreme Court of the State of California denying the same, transcript of record, page 205, are deemed [fol. 236] necessary to be printed.

Dated October 8, 1934.

Frank D. Madison, Francis Gill, Counsel for Appellant.

Service of and receipt of a copy of the within statement of points to be relied upon and designation of the parts of the record to be printed are hereby acknowledged this 9 day of October, 1934.

Everett A. Corten, Attorney for Appellee, Industrial Accident Commission of the State of California.
Elmer P. Delany, Attorney for Appellee, Juan Palma.

[File endorsement omitted.]

[fol. 237] SUPREME COURT OF THE UNITED STATES

APPELLEES' DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed Oct. 22, 1934

Appellees state that the following parts of the Transcript of the Record are necessary for the consideration of the case and that they, and each of them, are deemed necessary to be printed:

Of the return to writ of review:

	Transcript page
Transcript of testimony, Juan Palma	109-111, inclusive
Transcript of testimony, Juan Palma	119-123, "
Amended Answer	146-150

Dated: October 17, 1934.

Everett A. Corten, Counsel for Appellee, Industrial Accident Commission. Elmer P. Delany, Counsel for Appellee, Juan Palma. George C. Faulkner, of Counsel.

Receipt of a copy of the within designation of the parts of the record to be printed are hereby acknowledged this 17th day of October, 1934.

F. D. Madison, Francis Gill, Pillsbury, Madison & Sutro, Attorneys for Appellant.

[fol. 238] [File endorsement omitted.]

Endorsed on cover: File No. 39,093. California, Supreme Court. Term No. 465. Alaska Packers Association, Appellant, vs. The Industrial Accident Commission of the State of California and Juan Palma. Filed October 13, 1934. File No. 465, O. T., 1934.